ESKRIDGE LAW
GAYLE L. ESKRIDGE (BAR NO. 134822)
JANELLE L. MENGES (BAR NO. 293865)
JACQUELINE M. WADE (BAR NO. 304024)
21250 Hawthorne Boulevard, Suite 450
Torrance, CA 90503-5512
Telephone: 310/303-3951
Facsimile: 310/303-3952
Website: www.eskridgelaw.net

Attorneys for Plaintiff ELIZABETH L. GREENWOOD

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ELIZABETH L. GREENWOOD,

Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation; OFFICE OF THE LOS ANGELES CITY ATTORNEY, a department of the CITY OF LOS ANGELES; MICHAEL N. FEUER, CITY ATTORNEY, an individual; CORY BRENTE, an individual; and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: 19STCV02469

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR:

1. **Discrimination On the Basis of Physical Disabilities in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(a)]**
2. **Failure to Engage in the Interactive Process in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(n)]**
3. **Failure to Accommodate Physical Disabilities in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(m)]**
4. **Harassment On the Basis of Physical Disabilities in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(j)]**
5. **Discrimination on the Basis of Sex in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(a)]**
6. **Harassment on the Basis of Sex in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(j)]**

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Defendants.

CASE NO.: 19STCV02469

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR:

7. Retaliatory Discrimination (Retaliation) in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(h)]

8. Discrimination for Exercising the Right to Medical Leave Pursuant to the California Family Rights Act [Including, specifically, Gov. Code § 12945.2(l)]

9. Interference in Violation of the California Family Rights Act [Including, specifically, Gov. Code § 12945.2(t), and 2 Cal. Code Regs. § 11094]

10. Failure to Take All Reasonable Steps to Prevent Discrimination and Harassment in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(k)]

11. Retaliation in Violation of the First Amendment

12. Whistleblowing – Common Law Retaliation in Violation of Public Policy

13. Whistleblowing – Retaliation in Violation of California Labor Code section 1102.5

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Website: www.eskridgelaw.net

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ELIZABETH L. GREENWOOD,

Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation; OFFICE OF THE LOS ANGELES CITY ATTORNEY, a department of the CITY OF LOS ANGELES; MICHAEL N. FEUER, CITY ATTORNEY, an individual; CORY BRENTE, an individual; and DOES 1 - 20, inclusive,

Defendants.

CASE NO.: 19STCV02469

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR:

14. Whistleblowing – Violation of Labor Code section 6310

Dept: **73**
Judge: **Hon. Rafael A. Ongkeko (and Hon. Christopher K. Lui)**

Case Filed: January 25, 2019
CMC: May 17, 2019
Trial Date: Not set

TABLE OF CONTENTS

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Plaintiff ELIZABETH L. GREENWOOD ("Plaintiff") alleges as follows:

PARTIES

1. At all relevant times herein, Plaintiff has been a resident of the County of Los Angeles, State of California.

2. At all relevant times herein, Defendant CITY OF LOS ANGELES ("Defendant CITY") has been a municipal corporation in the County of Los Angeles, State of California.

3. At all relevant times herein, Defendant OFFICE OF THE LOS ANGELES CITY ATTORNEY ("Defendant CITY ATTORNEY'S OFFICE") has been a department of Defendant CITY.

4. At all relevant times herein, Defendant MICHAEL N. FEUER, CITY ATTORNEY ("Defendant FEUER") has been the City Attorney for Defendant CITY. Defendant FEUER is, and at all relevant times has been, the City Attorney, and therefore a managing agent of Defendant CITY and Defendant CITY ATTORNEY'S OFFICE as defined in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563. (Defendant FEUER, Defendant CITY, and Defendant CITY ATTORNEY'S OFFICE may be jointly referred to herein as the "EMPLOYER Defendants.")

5. EMPLOYER Defendants (including Defendant FEUER) have been, at all relevant times herein, employers pursuant to the Fair Employment and Housing Act because each and all of them "regularly employ five or more persons, or act as an agent of an employer, directly, or indirectly." [Gov. Code § 12962(d); 2 Cal. Code Regs. § 11008(d).]

6. EMPLOYER Defendants (including Defendant FEUER) have been, at all relevant times herein, employers pursuant to the Fair Employment and Housing Act because each and all of them have had the authority to control the means and manner of the employment of Plaintiff and other employees, the power to determine the schedule and assignments of Plaintiff and other employees, and the power to promote and discharge Plaintiff and other employees.

7. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times herein, Defendant CITY OF LOS ANGELES and Defendant CITY ATTORNEY'S OFFICE were and now are valid government entities, duly organized and existing under the laws of the State of California, having their principal places of business in the County of Los Angeles, State of California.

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant FEUER is an elected official, who is in charge of and responsible for Defendant CITY ATTORNEY'S OFFICE, and who serves as the lawyer for Defendant CITY OF LOS ANGELES.

9. At all relevant times herein, Defendant CORY BRENTE ("Defendant BRENTE") has been an individual residing in the County of Los Angeles, State of California. Defendant BRENTE is, and at all relevant times has been, a Supervising Assistant City Attorney employed by EMPLOYER Defendants, and assigned to the Police Litigation Unit of Defendant CITY ATTORNEY'S OFFICE. At all relevant times herein, Defendant BRENTE was acting in the course and scope of his employment with EMPLOYER Defendants, as a supervisor, manager, director, or agent of EMPLOYER Defendants.

10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants named herein as DOES 1 through 20, inclusive, and therefore sues those Defendants by such fictitious names. DOES 1 through 10 are DOE defendants who are **not** public entities. DOES 1 through 20 are DOE defendants who **are** public entities. Plaintiff will amend this complaint to allege the true names and capacities of the Defendants designated as DOES 1 through 20, inclusive, when they have been ascertained. Plaintiff is informed and believes, and on that basis alleges, that Defendants designated herein as DOES 1 through 20, inclusive, are responsible in some manner for the acts, events and occurrences alleged herein, and caused or contributed to the damages sustained by Plaintiff. (DOES 1 through 20 are hereafter referred to as "DOE Defendants.")

11. Plaintiff is informed and believes, and on that basis alleges, that at all relevant times herein, the Defendants designated herein as DOES 1 through 20, inclusive, acted as the agents and/or employees of the EMPLOYER Defendants and of the other fictitiously-named Defendants. Each of them, while acting in the course and scope of their agency and/or employment, performed the acts and conduct hereinafter alleged, and said acts and conduct were ratified and approved by each Defendant.

JURISDICTION AND VENUE

12. The EMPLOYER Defendants are subject to suit under the California Fair Employment and Housing Act ("FEHA") [Gov. Code §§ 12900, *et seq.*), since they were "employers" pursuant to the FEHA and therefore covered by the FEHA. The EMPLOYER Defendants employed Plaintiff throughout the

relevant period. The FEHA applies to the EMPLOYER Defendants because they regularly employed five or more persons and are doing business in the State of California. [Gov. Code § 12926(d); 2 Cal. Code Regs. § 11008(d).] Among other things, the FEHA prohibits discrimination and harassment on the basis of physical disability and sex, and retaliation for complaining about discrimination and/or harassment. The FEHA also prohibits violation of the California Family Rights Act ("CFRA")[1], and retaliation for complaining about violation of the CFRA.

13. Defendant BRENTE is subject to suit for harassment pursuant to the FEHA pursuant to Government Code section 12940(j).

14. Plaintiff filed her original charges against EMPLOYER Defendants and Defendant BRENTE with the Department of Fair Employment and Housing ("DFEH") on September 4, 2018, filed revised charges against EMPLOYER Defendants and Defendant BRENTE with the DFEH on January 14, 2019, and filed further revised charges on March 5, 2019. On both occasions, Plaintiff was provided with a Notice of Case Closure (Right-To-Sue Letter) against EMPLOYER Defendants and Defendant BRENTE. Plaintiff served the revised DFEH Complaint and Notice of Case Closure (Right-To-Sue Letter) on EMPLOYER Defendants and Defendant BRENTE before filing the original Complaint in this matter. Plaintiff served the second revised DFEH Complaint and Notice of Case Closure (Right-To-Sue Letter) on EMPLOYER Defendants and Defendant BRENTE before filing the First Amended and Supplemental Complaint. Plaintiff has therefore exhausted all administrative remedies necessary relating to her claims under the FEHA, and has timely brought this action.

15. True and correct copies of Plaintiff's revised DFEH Complaint and Notice of Case Closure (Right-to-Sue Letter), dated January 14, 2019, are attached hereto as Exhibit 1, and incorporated herein by this reference as though fully set forth. Copies of the proofs of service of Plaintiff's Amended DFEH Complaint and Notice of Case Closure (Right-to-Sue Letter), dated January 15, 2019, on each of the named Defendants are attached hereto as Exhibit 2, and incorporated herein by this reference as though fully set forth at this point. True and correct copies of Plaintiff's further revised DFEH Complaint and Notice of

[1]What is commonly referred to as the California Family Rights Act is officially named the Moore-Brown-Roberti Family Rights Act. Therefore, as used herein, "California Family Rights Act" refers to the Moore-Brown-Roberti Family Rights Act.

Case Closure (Right-to-Sue Letter), dated March 5, 2019, are attached hereto as Exhibit 3, and incorporated herein by this reference as though fully set forth. Copies of the proofs of service of Plaintiff's Amended DFEH Complaint and Notice of Case Closure (Right-to-Sue Letter), dated March 18, 2019, on each of the named Defendants, are attached hereto as Exhibit 4, and incorporated herein by this reference as though fully set forth at this point.) This court has jurisdiction to hear statutory claims brought pursuant to the FEHA against EMPLOYER Defendants and Defendant BRENTE

16. Plaintiff also filed a Claim for Damages (Claim No. C19-05311) with the City of Los Angeles on March 21, 2019. This Court therefore has jurisdiction to hear all claims which are brought against the public entities.

FACTS COMMON TO MULTIPLE CAUSES OF ACTION

17. Plaintiff is a 54-year-old female who has multiple physical disabilities.

18. Plaintiff has been employed as a Deputy City Attorney with EMPLOYER Defendants since July 1996, when she began as a Deputy City Attorney I, Step A. In May 1998, Plaintiff was assigned to Central Trials. In March 1999, Plaintiff was assigned to the Gangs Unit, where she worked as a prosecutor from 1999 to 2007. In March 2007, Plaintiff was transferred to Homeland Security and promoted to Deputy City Attorney III, Step G (equivalent to Step 13 under the new system). In March 2009, she was transferred to the Neighborhood Prosecutor Program, working as Neighborhood Prosecutor – South Bureau. In that position, Plaintiff attended community meetings and prosecuted projects and issues which were most negatively affecting the area to which she was assigned.

19. Over the years, Plaintiff has received numerous awards and recognitions from Defendant CITY ATTORNEY'S OFFICE, the Los Angeles Police Department, the Office of the District Attorney, the County of Los Angeles, the California State Senate, the California Legislature Assembly, and Congresswoman Jane Harman. Plaintiff has been positively mentioned in the *Daily Breeze* about 20 times.

20. In 2009, Plaintiff began suffering from back pain, as a result of being required to sit at a desk long hours at work, and being provided with inadequate office furniture and equipment. On November 3, 2009, Plaintiff was diagnosed by Roy Simon, M.D. as having severe lumbar radiculopathy. Plaintiff underwent x-rays and an MRI of her spine on November 9, 2009; based on that, Arnold Rappaport, M.D.

diagnosed her as having disc degenerative changes at multiple levels, and disc protrusion at the L4-5 level, resulting in a mild neural foraminal stenosis.

21. On November 17, 2009, December 1, 2009, January 8, 2010, and February 2, 2010, Plaintiff underwent lumbar epidural steroid injections and selective nerve root blocks at L5-S1 (left side). Plaintiff informed her immediate supervisor at the time, Sonja Dawson (Supervising Neighborhood Prosecutor – South Bureau), and the Human Resources Department of her diagnosis, and of her need to take time off for the medical procedures (which was usually one day per procedure, although a couple times she was off three days per procedure due to anaphylactic reactions). In addition to the procedures mentioned above, Plaintiff went to physical therapy three times per week at multiple locations, and also worked with a strength trainer.

22. Despite the aggressive treatment, Plaintiff's symptoms worsened. By March 2010, she had pain when sitting at her desk, driving, lifting, carrying, reaching, bending, and squatting. Her diagnosis at that time (by William Dillin, M.D.) was: 1) Lumbar Degenerative Disc Disease, 2) Lumbar Radiculopathy, and 3) Lumbar Disc Herniation. Lumbar spine surgery was recommended. On March 12, 2010, Plaintiff underwent spinal surgery, having: 1) A left L4-L5 Modified Microdiscectomy; 2) A left L4 Hemilaminotomy; and (3) A left L4-L5 Lateral Recess Resection. She was on leave pursuant to the Family and Medical Leave Act ("FMLA") and CFRA for three months, from approximately March 11 through June 5, 2010.

23. Prior to Plaintiff's surgery and CFRA leave, she had been assigned to the Neighborhood Prosecutor Program – South Bureau, where she interacted with the community and served as a Neighborhood Prosecutor. She enjoyed this job because it involved working with the community and being in court. Plaintiff had an office in the San Pedro City Hall during the time she was a Neighborhood Prosecutor, which worked well since Plaintiff resided in San Pedro.

24. On September 7, 2010, Plaintiff was transferred to Housing Enforcement because of a request by Mary Clare Molidor. Plaintiff did not want this transfer because, for someone who had been a prosecutor in the Gang Unit, then an attorney in Homeland Security, then a Neighborhood Prosecutor, being transferred to Housing Enforcement was not a forward trajectory for her career path, and was not even a lawyer type of job. However, Mary Clare Molidor told Plaintiff she would continue to be working out of an office in San Pedro (which was of course important to Plaintiff because driving exacerbated her lumbar

spine disability), and attempted to convince Plaintiff that even though the position was not really an attorney position, but actually more of a mediator position, once she got into the position, she would like it. At Housing Enforcement, Plaintiff mediated disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance. Although she did not like the job at first, Mary Clare Molidor was right – after Plaintiff performed this job for a while, she came to enjoy it because she thought she was making a difference in peoples' lives. (These are the same people Donald Cocek would later refer to as "all these crazy people," on his first day of work as Supervising City Attorney, Code Enforcement Section.)

25. In September 2010, Plaintiff informed her new supervisor, Jonathan Galatzan (Supervising Attorney, Housing Enforcement), of her lumbar spine disability almost immediately after being transferred to Housing Enforcement. Later in September 2010, Plaintiff told Jonathan Galatzan about the lower back pain she was having, especially when sitting in her desk chair at work. (Plaintiff was working from an office in the San Pedro City Hall at this time, so at least she did not have to spend hours driving.) Over the next few months, Plaintiff repeatedly told Jonathan Galatzan about the pain she was experiencing while sitting, but Defendants failed to initiate a timely, good-faith, interactive process or to do anything else regarding Plaintiff's complaints of pain caused by sitting at her desk.

26. In early 2011, Roy Simon, M.D. prescribed Plaintiff an anti-inflammatory and a pain medication, and also prescribed that she have an ergonomic chair for work, and that an ergonomic evaluation of her office be conducted. Plaintiff submitted the prescription for the ergonomic chair to the Human Resources Department, but absolutely no action was taken.[2] Plaintiff continued complaining to Jonathan Galatzan about her ongoing back pain while sitting in her desk chair. She asked him to try to get the Human Resources Department to arrange for the ergonomic evaluation, but he was no help at all.

27. In fact, rather than attempt to assist Plaintiff in obtaining the ergonomic evaluation, in spring and summer 2011, Jonathan Galatzan began harassing and discriminating against Plaintiff.[3] For example,

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[2]This was the first of many requests Plaintiff made for reasonable accommodations for her physical disability.

[3]This was the beginning of the harassment and discrimination to which Plaintiff has been subjected because of her physical disability.

although Plaintiff was already mediating disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance on a city-wide basis (while working from an office in the San Pedro City Hall), Jonathan Galatzan assigned Plaintiff additional work consisting of code violation cases which required her to travel to downtown Los Angeles on a regular basis. This is not what Plaintiff had been assigned to do when Mary Clare Molidor caused Plaintiff to be transferred into Housing Enforcement.[4] Plaintiff did not want this new assignment and did not agree to it. Plaintiff's workload mediating Rent Stabilization Ordinance violations city-wide was a full-time job, and Plaintiff also spent several hours per week in her role as an elected commissioner of the Los Angeles City Employees' Retirement System ("LACERS"). Adding code violation cases not only increased Plaintiff's workload to about 60 hours per week, but required her to spend much more time in downtown Los Angeles, rather than in her office in San Pedro. Also, rather than attempt to assist Plaintiff in obtaining the ergonomic evaluation of her office (which was in San Pedro), Jonathan Galatzan assigned Plaintiff to a work area in downtown Los Angeles which consisted of a desk in a storage closet, which was **less** ergonomically correct than her office in San Pedro, and with a chair which was even more uncomfortable than her chair in San Pedro. The additional travel of course exacerbated Plaintiff's disability, and she told Jonathan Galatzan this. Jonathan Galatzan nonetheless left the code violation assignments on Plaintiff's storage closet desk.

28. Throughout summer and fall, 2011, Plaintiff complained to Jonathan Galatzan about how the downtown assignments were exacerbating her lumbar spine disability, due both to the travel and the completely non-ergonomic storage closet office. Jonathan Galatzan responded on October 14, 2011, by issuing a Notice to Correct Deficiencies to Plaintiff, in which he accused her of failing to file four code violation cases on time, even though filing delays had been a longstanding problem within the Housing Enforcement Department for many years before Plaintiff was assigned to the unit. Additionally, the practice in Housing Enforcement was to delay the cases for years, until the owners were able to gather enough

[4]Plaintiff's job, as requested by Mary Clare Molidor, Senior Assistant City Attorney in Charge of Safe Neighborhoods, was to mediate and prosecute violations of the City's Rent Stabilization Ordinance. It was not to prosecute families who had scraped together enough money to purchase an apartment building where there had been a previous illegal subdivision.

money to make the repairs. It was not uncommon for cases to last several years. Sometimes when it was clear the owners did not have any money to make repairs, cases lasted so long that the statute of limitations ran. This was happening for years before Plaintiff began to be assigned the code violation cases (in addition to her **full-time** assignment of mediating Rent Stabilization Ordinance violations).

29. In approximately November 2011, Jonathan Galatzan was replaced by Donald Cocek. Plaintiff immediately told Donald Cocek about her back injury, about her pain issues, and about her request for an ergonomic evaluation and an ergonomic chair, which she now needed in two offices (San Pedro and downtown). Plaintiff asked whether there was anything Donald Cocek could do to assist in obtaining these items. During late 2011 and 2012, Plaintiff repeatedly attempted to discuss her lumbar spine pain with Donald Cocek, but every time Plaintiff tried to talk with Donald Cocek, he stared at Plaintiff's breasts the entire time. (Donald Cocek also stared at Plaintiff's breasts every time she attempted to have a private conversation with him, and even sometimes when other people were present. Plaintiff did not report this sexual harassment, as it paled in comparison to the disability discrimination and harassment she was experiencing at the time, and having been working for Defendant CITY and Defendant CITY ATTORNEY'S OFFICE, sexual harassment was not new to her.)

30. Donald Cocek also constantly interrogated Plaintiff about the work she was doing for LACERS.[5] It seemed to irritate him that he could not manage all Plaintiff's time. He came up with more and more requirements for Plaintiff to provide evidence regarding the time she spent working on LACERS, what LACERS activities she engaged in, where those activities took place, and even the specific LACERS activities in which she was engaged (which he had no authority to ask). When Plaintiff would inform Donald Cocek regarding when and what she was doing for LACERS, and where she was doing it, he accused her of lying. Donald Cocek even went to Earl Thomas, Chief of Criminal and Special Litigation Division, about this, and Earl Thomas sent Plaintiff a memo on November 9, 2011. In that memo, Earl

[5]Plaintiff is one of seven people who manage LACERS. She was elected to a five-year term in 2009, and re-elected to a second five-year term in 2014. Defendant CITY and Defendant CITY ATTORNEY'S OFFICE pay for Plaintiff's time spent serving LACERS. What Plaintiff is doing in her role as an elected member of the Board of Administration of LACERS is none of Donald Cocek's business, but he frequently interrogated Plaintiff about her work on LACERS, then accused her of lying when she explained what she had been doing.

Thomas acknowledged that Plaintiff had "an obligation to perform fiduciary duties on behalf of LACERS," yet demanded that Plaintiff obtain advance approval from Donald Cocek before performing any of these fiduciary duties. Around this time, Plaintiff applied for a position in San Pedro, but right after she applied, the job requisition was canceled.

31. Plaintiff's back pain continued to worsen through 2011 and 2012. She repeatedly told Donald Cocek she was experiencing back pain, and needed an ergonomic evaluation of her office. Plaintiff also called the Human Resources Department during this time, to ask that the ergonomic evaluation (for which she had submitted a prescription in early 2011) be conducted without further delay. When Plaintiff was out on sick leave because of agonizing back pain (and the lack of ergonomic evaluation of her office), Donald Cocek harassed her by doing things such as sending her emails demanding that she submit her schedule for the following week. In June 2012, Donald Cocek sent Plaintiff an email stating, "I want all RSO hearings to be held at the Reyes Branch, not in San Pedro, West LA, or any other location. I will be attending the hearings, too." [Emphasis in original.]

32. Plaintiff continued to advise Donald Cocek of her back pain, and to discuss the fact that an ergonomic evaluation of her office was needed. Rather than assist, however, in July 2012, Donald Cocek took the job of mediating Rent Stabilization Ordinance violations away from Plaintiff, so that she was handling code violation cases **exclusively**. When Plaintiff asked why he was doing this, Donald Cocek was not able to articulate a reason. Additionally, the non-disabled male attorney to whom the work was assigned (Michael Duran) did not even want the work. Changing Plaintiff's job so that she was handling code violation cases exclusively meant she was required to travel to downtown Los Angeles five days per week, and sit at a non-ergonomic desk in a non-ergonomic chair in the non-ergonomic storage closet office. These things exacerbated Plaintiff's back pain, and she was in pain 100% of the time she was either at work, or commuting to and from work.

33. On October 11, 2012, Plaintiff's father died very unexpectedly. The stress of this death exacerbated Plaintiff's back pain, and she was forced to take accrued vacation and sick leave from approximately October 2012 to approximately January 29, 2013. EMPLOYER Defendants were aware of Plaintiff's physical disability because she submitted a February 20, 2013 note from her primary care physician, Terry Ishihara, M.D., to the Human Resources Department. (EMPLOYER Defendants required

Plaintiff to submit a note from her physician before they would classify any of her time off as sick leave. Until she provided the note, the time off had been classified as accrued vacation.) **During** her medical leave of absence, Donald Cocek sent Plaintiff numerous emails pressuring her to return to work and hassling her about information on her time cards, among other things. Donald Cocek even continued to assign cases to Plaintiff. As an example, he assigned the Vera Little matter to Plaintiff on November 2012, then later criticized Plaintiff because she did not file the case until March 21, 2013 (less than two months after she returned to work).

34. Worse yet, on the **first day** Plaintiff returned to work following her medical leave of absence, Donald Cocek gave Plaintiff a Notice to Correct Deficiencies for failing to file cases which he had assigned to her **after** she went out on approved leave, and the deadlines for which had passed **before** she returned from leave. Knowing Plaintiff was out on extended leave, Donald Cocek should have assigned the cases to other attorneys, but he did not. Instead, he kept the cases assigned to Plaintiff and waited for the statutes of limitations to run out in some of the cases, and other deadlines to pass in other cases.[6] Plaintiff refused to sign the Notice to Correct Deficiencies for events which happened while she was on approved leave, and apparently Donald Cocek did not submit it to Personnel, because Plaintiff heard nothing more about it. Donald Cocek later tried to give Plaintiff a Notice to Correct Deficiencies relating to her work as an elected Commissioner of LACERS. Even though Donald Cocek had absolutely no involvement with LACERS, he accused Plaintiff of falsifying her time sheets for the time she was attributing to LACERS responsibilities. Plaintiff filed a grievance, Mary Clare Molidor mediated the matter, and the Notice to Correct Deficiencies went away. Even at the end of the mediation, however, Donald Cocek accused Plaintiff of "fudging" her time sheets. Plaintiff told Mary Clare Molidor she could not work for someone who thought she was a liar. Donald Cocek responded that he did not think Plaintiff was a liar, but that she needed to be honest on her time sheets. Therefore, although the Notice to Correct Deficiencies went away, nothing changed in Donald Cocek's treatment of Plaintiff.

[6]Donald Cocek was normally not even concerned about statutes of limitations expiring, as evidenced in his August 2, 2012 email to Roya Babazadeh and Shamika Harris where he describes that the statutes of limitations had expired on certain files which his department apparently discovered when it was going through its stored files in preparation for moving out of the building.

35. On June 3, 2013, Plaintiff was finally transferred to a position which was commensurate with her many years of experience as a trial attorney. Plaintiff was transferred to the Police Litigation Unit, where she defends multimillion-dollar claims against Defendant CITY in both state and federal court trials. Plaintiff's supervisor in the Police Litigation Unit was (and still is) Defendant BRENTE, Supervising Assistant City Attorney, Police Litigation Unit. This position involves longer hours than Plaintiff's previous position, and a significant amount of responsibility, and Plaintiff should have been promoted to at least a Deputy City Attorney IV, Step C, when she was transferred to this position, but she was not, as a direct result of her sex and physical disability. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step C, or higher.

36. Plaintiff informed Defendant BRENTE of her lumbar spine (musculoskeletal) disability, and of the accommodations she needed for that disability, immediately upon being transferred to the Police Litigation Unit in June 2013.

37. Although Plaintiff enjoyed the position in the Police Litigation Unit, she continued to suffer constant pain related to her lumbar spine disability. She complained repeatedly to Defendant BRENTE about the need for an ergonomic chair and for an ergonomic evaluation of her office. These complaints lasted through the remainder of 2013 and to the present.

38. Despite her constant pain and disability-related absences, Plaintiff has been very successful in her position as trial attorney with the Police Litigation Unit. In January 2014, she obtained a total defense verdict in a federal court bench trial (*Gheli Carpaccio v. Sergeant Todd Cataldi, et al.*). In June 2015, she obtained a defense verdict in a federal court jury trial (*Robert S. Markman and Lisa J. Markman v. Det. John Macchiarella, et al.*), and in September 2017, she won another major federal court jury trial (*Raymond Hiawatha Porter v. City of Los Angeles, et al.*) – each time saving Defendant CITY potentially hundreds of thousands of dollars. Plaintiff has in fact **never lost a trial** while in the Police Litigation Unit.

39. On her anniversary date in March 2014, Plaintiff should have been promoted to Deputy City Attorney IV, Step D, but she was not. (She only received her small anniversary step, which is virtually automatic.) Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were

promoted to ranks of Deputy City Attorney IV, Step D, or higher.

40. On her anniversary date in March 2015, Plaintiff should have been promoted to Deputy City Attorney IV, Step E, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. (She only received her small anniversary step, which is virtually automatic.) Instead, she was stuck in the Deputy City Attorney III, Step G, position, where she had been since March 23, 2007. This failure and/or refusal to promote Plaintiff was a direct result of her sex and physical disability. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step E, or higher.

41. Although Plaintiff was succeeding in the courtroom, she was continuing to experience constant back pain, especially when working at the desk in her office. Her pain when sitting down was so bad that she had family and friends drive her to and from work, and to and from the courthouses. Plaintiff's back pain was so severe that she had to go to the emergency department of San Pedro Hospital on July 7, 2015. On July 8, 2015, Plaintiff reported to her doctor at Kerlan-Jobe that she had pain in her back and left leg which had gotten worse, and that her symptoms worsened as she sat and drove. At the time, she was unable to lift, carry, reach, bend, push, pull, climb, kneel, or squat. She was diagnosed with: 1) Lumbar degenerative disc disease; 2) Lumbar radiculopathy; and 3) Status post lumbar discectomy. Plaintiff continued to complain to Defendant BRENTE about her lumbar spine disability, and continued to request accommodations as discussed above.

42. A July 13, 2015 MRI of Plaintiff's lumbar spine showed: 1) Degenerative disc disease at L4-5 with a 2mm left lateral disc bulge/protrusion and contiguous 8x5mm left lateral extrusion effacing the left L5 nerve root; 2) Left laminectomy; 3) Disc desiccation at L5-S1 with a 3mm left lateral disc bulge abutting the left L5 and exiting the left L4 nerve roots; 4) Disc desiccation at L1-2 with a 12x4mm contiguous and superior extrusion abutting the posterior margin of the L1 vertebral body; 5) Mild disc desiccation at L3-4 with mild central canal stenosis due to facet and ligamentum flavum hypertrophy; 6) Disc desiccation at the L2-3 level with a 1.5mm central and right lateral disc bulge; and 7) Possible adenomyosis of the uterus. After that, Plaintiff began seeing Fabian Proano, M.D. for pain management.

43. Despite the continuous pain she was enduring, Plaintiff continued to prevail at trial. As

mentioned above, in June 2015 Plaintiff obtained a defense verdict in a federal court jury trial (*Robert S. Markman and Lisa J. Markman v. Det. John Macchiarella, et al.*). Plaintiff continued trying to work and to deal with her back pain. On August 12, 2015 and again on October 5, 2015, she had a procedure consisting of lumbar selective nerve root blocks at the left L4-L5 level and a lumbar epidural steroid injection at the L4-L5 level.

44. Having received no response from Defendant BRENTE to her two and one-half years of requests for accommodations for her lumbar spine disability, on January 6, 2016, Plaintiff sent an email to Wanda Hudson in the Human Resources Department, stating that she had two prescriptions – one for an ergonomic chair and another for an ergonomic analysis of her office. Plaintiff explained to Wanda Hudson that she had lower back surgery five years earlier and had a reoccurrence of the problem in June 2015. Plaintiff explained that she was healing slowly and that although her office chair was only a couple years old, after sitting in the chair for a while, she had quite a bit of pain and difficulty standing back up. Plaintiff told Wanda Hudson that she hoped a new ergonomic chair, coupled with an ergonomic analysis of her office, would help. Plaintiff attached the new prescription for her chair to the email and said she could also get the prescription for the ergonomic analysis if needed. Plaintiff copied her supervisor, Defendant BRENTE, on the email to Wanda Hudson and, on January 7, 2016, forwarded the email to Cristina Sarabia, Human Resources Director.

45. On January 8, 2016, Cristina Sarabia sent an email in which she instructed Plaintiff to submit her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Defendant CITY's Personnel Department. Cristina Sarabia stated that Plaintiff needed to get her supervisor to approve her request (which seems very strange, since her supervisor is not an ergonomics specialist, and had in fact done nothing to facilitate Plaintiff obtaining the ergonomic items up to that point), and that after that happened, an appointment would be scheduled within two to three weeks. Cristina Sarabia further stated that, once the Occupational Safety and Health Division determined what ergonomic items Plaintiff required, the Human Resources Department would work with Plaintiff to get the recommended equipment to her "promptly." Plaintiff immediately submitted her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Defendant CITY's Personnel Department, as directed by Cristina Sarabia.

46. An ergonomic evaluation of Plaintiff's workstation was conducted on February 1, 2016. On February 16, 2016, Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, issued a report in which she listed the equipment which Plaintiff required. This included a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. The report provided:

> **The requesting department supervisor or referring agent is responsible for addressing and carrying out the recommendations in this report. This includes ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to the workstation.** For City owned buildings, General Services Division can install some equipment. . . .

[Emphasis added.] Plaintiff's department supervisor was Defendant BRENTE.

47. Also on February 16, 2016, Daniela Zaccaro sent an email to Defendant BRENTE, Wanda Hudson, and Plaintiff, in which she provided information on possible vendors, and stated:

> **The requesting department supervisor or referring agent is responsible for addressing and carrying out the recommendations in this report. This includes ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to the workstation.** For City owned buildings, General Services Division can install some equipment. . . .

[Emphasis added.] By this time it had been about six weeks since Plaintiff submitted her most recent request for an ergonomic chair and an ergonomic evaluation.[7]

48. On February 29, 2016, Plaintiff had additional injections of steroids, bilaterally at the L4-S1 level.

49. On her anniversary date in March 2016, Plaintiff should have been promoted to Deputy City Attorney IV, Step F, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. (She only received her small anniversary step, which is virtually automatic.) Instead, Plaintiff was stuck in the Deputy City Attorney III, Step G, position, where she had been since March 23, 2007. This failure to promote Plaintiff was a direct result of her sex and physical disability. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City

[7]Plaintiff's original prescription for an ergonomic chair and request for an evaluation for an ergonomic work station was in early 2011.

Attorney IV, Step F, or higher.

50. In March 2016, Plaintiff began to have a different medical problem. She had been having extremely heavy menstrual periods for years, to the point where she had become anemic in 2012, and underwent an endometrial biopsy, after which she was diagnosed as having a fibroid uterus. The condition worsened, and she saw her gynecologist (Reza Askari, M.D.) on Friday, March 11, 2016. Plaintiff's hemoglobin was dangerously low because she was bleeding so much, and Dr. Askari admitted Plaintiff to the hospital that day, and she began taking FMLA/CFRA leave on that day – March 11, 2016. Plaintiff was given four units of whole blood, and was kept in the hospital over the weekend. She was released on Monday, March 14, 2016. On Thursday, March 17, 2016, Plaintiff began hemorrhaging and was rushed to the hospital. On March 18, 2016, Plaintiff underwent an emergency hysterectomy at Providence Little Company of Mary Medical Center in San Pedro. Before she went into surgery, Plaintiff contacted Defendant BRENTE, Cristina Sarabia, and Wanda Hudson, and advised all of them that she was having emergency surgery, and would need to take FMLA/CFRA leave for an unknown amount of time. Plaintiff also emailed Kellie Tran (Payroll and Special Funds Administrator) and told her she was having an emergency hysterectomy, and that she had already notified Defendant BRENTE. Kellie Tran emailed Cristina Sarabia and Wanda Hudson with the information the same day.

51. On March 24, 2016, Cristina Sarabia, Human Resources Director, sent Plaintiff a memo, advising her that her FMLA/CFRA leave was approved from March 18, 2016 through a date not yet determined. Cristina Sarabia also stated in the March 24, 2016 memo: "During your leave, the Payroll Section of the Los Angeles CITY ATTORNEY'S Office will input the appropriate payroll codes into our office's payroll system (D-Time)."

52. On April 26, 2016, Plaintiff's physician completed a medical certification in which he stated that Plaintiff would not be able to return to work until May 14, 2016, but that she was able to return to "limited work from home" as of April 18, 2016. On or about April 30, 2016, Plaintiff's physician **twice** faxed the Certification of Health Care Provider to Wanda Hudson of the Human Resources Department. Despite that, and despite the written assurances in Cristina Sarabia's March 24, 2016 memo, on May 1, 2016, while Plaintiff was home recovering from surgery, Wanda Hudson sent Plaintiff an email telling her she was being removed from payroll, effective May 2, 2016. Plaintiff had a substantial amount of accrued

sick leave at this time, which Wanda Hudson knew. The May 1, 2016 email from Wanda Hudson caused added stress, which Plaintiff alleges contributed to the various physical problems she was having.

53. Unfortunately, Plaintiff's problems relating to her hysterectomy were far from over. She experienced an abrupt and extremely severe menopause. Also around this time, she developed severe hypothyroidism, most likely caused by an auto-immune disorder. Plaintiff became exhausted and developed rashes and itchiness on her extremities. She was also damp and sweaty on her entire body all the time, which greatly delayed the healing of her incision and caused her to develop a postoperative wound infection. Plaintiff also had memory loss, difficulty concentrating, and was unable to think or reason at her normal level. She also began requiring about 16 hours of sleep per night. Although Plaintiff had planned to return to work on May 16, 2016, at least part-time, she was unable to because of the panoply of medical issues she was experiencing. Plaintiff's FMLA/CFRA leave was therefore continued from May 16, 2016 through June 5, 2016.

54. Arranging for this FMLA/CFRA leave was an ordeal, because Wanda Hudson repeatedly requested more detailed medical information (to which EMPLOYER Defendants were not entitled) from Plaintiff's doctor, and threatened Plaintiff that if she did not provide further medical details, she would be classified as "AWOL." Plaintiff's doctor had sent a letter dated May 24, 2016, stating that Plaintiff was able to work from home for up to six hours per day, and that she could return to work on June 5, 2016. As a result of Wanda Hudson's haranguing and threats, on May 26, 2016, Plaintiff's physician wrote another letter, in which he stated:

> Elizabeth Greenwood is unable to commute to and from the workplace. She is able to work from home for up to six hours a day. As she heals she is able to go out for short outings, but she is unable to be in an office environment for an extended period of time. This restriction is currently until June 5, 2016 and will be reviewed with Ms. Greenwood to see if further restrictions are necessary to maintain and improve her health as she recovers.

55. Plaintiff finally returned to work at the office on June 6, 2016. Plaintiff had voluntarily been doing some work from home starting in mid-April 2016, but was not paid for this time.[8]

[8] Although EMPLOYER Defendants had authorized Plaintiff to work from home three hours per day from May 3, 2016 through May 14, 2016, Defendant BRENTE never assigned Plaintiff any work during this period. However, Plaintiff's secretary would call from time to time and advise Plaintiff of deadlines and

56. When Plaintiff returned to work at the office on June 6, 2016, she thought that surely by this time, her office would be set up with the new ergonomic chair and the ergonomic equipment which the Occupational Safety and Health Division had recommended four months earlier, in February 2016. Unfortunately, even though Plaintiff had submitted her most recent request for an ergonomic chair and another for an ergonomic analysis of her office on January 5, 2016, neither the chair nor any of the other equipment had arrived. Therefore, in July 2016, Plaintiff emailed Wanda Hudson in the Human Resources Department about the fact that five months had passed since she had requested the ergonomic chair and an ergonomic analysis of her office, and she had still not received any of her ergonomic furnishings or equipment. About a week later, several boxes arrived in Plaintiff's office, but no one ever arrived to set up or install the items. According to the February 16, 2016 report from Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, and the February 16, 2016 email which Daniela Zaccaro sent to Defendant BRENTE, the requesting department supervisor (Defendant BRENTE) should have made arrangements for the equipment to be set up and installed, but he never did so. He did not even manage to get anyone to open the boxes to inventory what had arrived.

57. Plaintiff spoke repeatedly with Defendant BRENTE about her back pain and about the symptoms she was having relating to her abrupt menopause, her hormone deficiency, her auto-immune disorder[9], and her hypothyroidism, including having difficulty thinking and concentrating. Plaintiff described to Defendant BRENTE the things she was doing to try to cope, and kept him updated on her various doctor visits and diagnoses. When she had to be out of the office for medical procedures and appointments, she kept Defendant BRENTE and other staff updated regarding due dates, deadlines, etc. on the cases she was assigned. These conversations occurred from July 2016 through February 2017.

58. From July 2016 thorough February 2017, Plaintiff complained repeatedly to Defendant

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due dates on Plaintiff's cases (which had not been re-assigned during Plaintiff's FMLA leave), and Plaintiff would prepare whatever documents or take whatever action was required to prevent the case from being compromised.

[9]Around this time, Plaintiff was diagnosed as having an unspecified auto-immune disorder. She spent about a year trying to get a formal diagnosis concerning which auto-immune disorder she had. She saw an endocrinologist and submitted to numerous tests, but the auto-immune disorder was never formally specified.

BRENTE about her lumbar spine pain, and about the fact that her ergonomic equipment and furniture were still in boxes in her office (assuming that is actually what the boxes contained). As far as Plaintiff is aware, Defendant BRENTE did nothing to even arrange for the items to be un-boxed so someone could inventory them – let alone arrange to get them set up and installed.

59. Because of the complete failure by EMPLOYER Defendants to accommodate Plaintiff's physical disability, her pain became worse and worse. She was forced to take 34 hours of sick leave in October 2016, then 50 hours of sick leave in November 2016, then 134 hours of sick leave in January 2017. In January 2017, Plaintiff was prescribed steroids, Norco, Flexeril, Ketorolac injections, Tramadol injections, and a Lidocaine patch for her back pain. Despite all these medications, Plaintiff was experiencing constant back pain, and was still attempting to deal with the various extreme menopause symptoms (extreme hormone imbalances) she was having. On January 17, 2017, Dr. Proano gave Plaintiff a prescription for a stand-up desk. Later that day, Plaintiff gave this prescription to Wanda Hudson in the Human Resources Department and to someone in the Occupational Safety and Health Division of the City Personnel Department.

60. On January 18, 2017 and again on February 1, 2017, Plaintiff had selective nerve root blocks at the L5 level and a lumbar epidural steroid injection at the L5-S1 level. In addition to the severe back pain, Plaintiff was still suffering from the effects of the emergency hysterectomy and abrupt entry into menopause causing an extreme hormone imbalance, as well as the auto-immune disorder and hypothyroidism. Chief among the side effects was the need for Plaintiff to sleep about 16 hours per night.

61. Plaintiff sent an email to Daniela Zaccaro, Ergonomist, Personnel Department, Occupational Safety and Health Division, and they set up a few appointments to meet, but on each of the appointment days Plaintiff was unable to come to work, because of both the excruciating pain in her lower back, and because of the hormone deficiencies she was dealing with, and which her doctors were still attempting to stabilize.

62. On January 22, 2017, Plaintiff received a change (**not** a promotion) from Deputy City Attorney III, Step G, to Deputy City Attorney III, Step 13, in order to convert to the new salary grade system.

63. On her anniversary date in March 2017, Plaintiff should have been promoted to Deputy City

Attorney IV, Step 10, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. Instead, she received only a small bump from Deputy City Attorney III, Step 13, to Deputy City Attorney III, Step 14. This failure to promote Plaintiff was a direct result of her sex, her physical disabilities, for taking FMLA/CFRA leave in 2016, and for complaining about this discrimination to Defendant BRENTE and to persons in the Human Resources Department. Plaintiff complained, among other things, that a male employee with physical disabilities comparable to hers would not be treated so callously. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 10, or higher.

64. In March 2017, as a result of the continued refusal of EMPLOYER Defendants to accommodate Plaintiff's physical disability, and the exacerbation which was caused by that continued refusal, Plaintiff was forced to take 24 hours of vacation and 16 hours of sick leave. In April 2017 she was forced to take 46 hours of sick leave. In May 2017 she was forced to take 99 hours of sick leave. Plaintiff complained to persons in the Human Resources Department that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee with disabilities comparable to her disabilities would not be treated so callously as she was being treated.

65. On June 12, 2017, Defendant BRENTE sent a memorandum to Human Resources, describing the essential job functions of deputy city attorneys working in the Police Litigation Unit (which is where Plaintiff had been assigned since June 2013). The essential job duties included functions which required a substantial amount of sitting (or standing) at a desk (although no time estimate was provided), and which also required traveling to court and to depositions, carrying, wheeling, lifting, and maneuvering boxes of trial documents, binders, and exhibits, "which are often voluminous." These essential job functions were not consistent with what the job had consisted of in the past, since support staff, rather than attorneys, took boxes of trial documents, binders, and exhibits to court and back, and did the "carrying, wheeling, lifting, and maneuvering." (Since Plaintiff's secretary had retired in early 2017, and Plaintiff was not even assigned a new secretary, the only assistance she received came from the clerks.) This job

description with additional "essential job duties" appears to have been designed to make Plaintiff unqualified for her job, and to punish her for repeatedly requesting that she be treated fairly with regard to promotions, and that she be provided with the reasonable accommodations to which she was legally entitled.

66. On June 14, 2017, Plaintiff had to miss some work to undergo more lumbar facet injections in her lower back, bilaterally at the L4-SI level. A week later, on June 21, 2017, Defendant BRENTE began criticizing Plaintiff for missing work and not working from 8:30 a.m. to 5:00 p.m. Even though Plaintiff had told Defendant BRENTE about her medical issues in detail (which legally she was not required to do), and had explained to him the reasons why she had to take time off work for so many medical appointments, and had to sleep 12 to 16 hours per night, making it very difficult to arrive at work by 8:30 a.m. and to work for eight hours per day, Defendant BRENTE criticized Plaintiff for the various issues which he knew were beyond her control because of her medical disabilities. (There was not even any business reason which required Plaintiff to be physically at the office from 8:30 a.m. to 5:00 p.m.) As a supervisor, and as an attorney, Defendant BRENTE surely knew he was required to reasonably accommodate Plaintiff's disabilities, and that he should certainly not be disciplining her because of her disabilities.

67. After the June 21, 2017 meeting with Defendant BRENTE, Plaintiff submitted a formal request for reasonable accommodations to the Human Resources Department. The meeting regarding Plaintiff's requested reasonable accommodations took place on July 11, 2017, with David Trujillo (HR Analyst) and Margaret Shikibu, both of the Human Resources Department. The accommodations Plaintiff was requesting related to her extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, which were requiring her to sleep 12 to 16 hours per night, preventing her from getting to work at 8:30 a.m. on some days, and preventing her from working eight hours per day on some days.

68. On July 11, 2017, the Human Resources Department granted Plaintiff a so-called temporary accommodation by changing her schedule to 10:00 a.m. to 6:00 p.m. This was not sufficient, however, since Plaintiff had to sleep about 12 to 16 hours per night, and work eight hours per day, which adds up to 20 to 24 hours per day, leaving Plaintiff no time to commute back and forth from San Pedro to downtown, no time to get ready in the morning and eat breakfast, and no time to eat a real dinner in the evening. The

so-called accommodation meant that in order to get eight hours in at work, Plaintiff was forced to work through her lunch break, eating at her desk. While Plaintiff would normally have taken the opportunity to walk around and stretch during her lunch break, instead, she was forced to remain in place at her desk. Plaintiff was also forced to work in her office which **still** did not have the ergonomic improvements which had been requested first in 2011, and then again in January 2016, and some of which had been in unopened boxes in her office since July 2016 (at least, Plaintiff assumed that is what was in the boxes).

69. Plaintiff explained all this to Human Resources Department personnel, but her words fell on deaf ears. From July 23 through August 5, 2017, Plaintiff was forced to use 82 hours of sick leave and 38.5 hours of vacation as a direct result of the refusal of EMPLOYER Defendants to accommodate her disabilities. Plaintiff again complained to persons in the Human Resources Department that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

70. While Plaintiff was on sick leave, Defendant BRENTE failed to assign another attorney to cover Plaintiff's cases. As a result, some filing deadlines were missed. When Plaintiff was informed of filing deadlines, she would download the necessary documents from PACER and draft motions and other documents from home **while she was using her accrued sick leave.** (Plaintiff sometimes did not know about filing deadlines, however, since she had still not been assigned a secretary ever since her secretary retired in early 2017.)

71. The so-called temporary accommodation expired on July 28, 2017, because EMPLOYER Defendants required that Plaintiff submit documentation regarding her auto-immune disorder and hypothyroidism from her doctor (and in fact repeatedly and illegally requested detailed medical information to which EMPLOYER Defendants were not entitled), and Plaintiff could not get an appointment with the endocrinologist who was on Defendant CITY's health insurance plan until August 2017. In August 2017, Plaintiff's hormone replacement medication was doubled. Although Plaintiff was still suffering from other symptoms of extreme hormone deficiency, as well as with the symptoms resulting from her hypothyroidism and her auto-immune disorder, the doubling of her hormone replacement medication allowed her to

decrease her sleep time from 12 to 16 hours per night, down to 10 hours per night. While this was still a long time to sleep, it was a definite improvement.

72. By August 2017, it had been over six years since Plaintiff first started requesting an ergonomic evaluation, one and one-half years since it was finally performed, over a year since the boxes, presumably containing ergonomic items, were delivered to her office (but never even opened), and seven months since Plaintiff's doctor prescribed a stand-up desk. Plaintiff had spent hours talking to and emailing with the Human Resources Department, the Occupational Safety and Health Division of Defendant CITY's Personnel Department, and her supervisor, Defendant BRENTE, but absolutely nothing had been accomplished as far as any reasonable accommodations for Plaintiff's lumbar disability. The pain in her back was increasing to the point where she was in constant pain, had frequent muscle spasms, and was often unable to drive herself to and from work. She was taking so much pain medication it was adding to the fatigue she was already battling, and made it even more difficult for her to concentrate at work. Therefore, on August 14, 2017, Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE and went out on sick leave.

73. From August 14 through November 2017, Plaintiff constantly asked her supervisor, Defendant BRENTE, about her workers' compensation claim, to see when she would receive information regarding her workers' compensation medical leave, and Defendant BRENTE repeatedly told her to continue using her accrued sick leave whenever she was in too much pain to come to work. He also told Plaintiff that Human Resources told him a workers' compensation claim had not yet been opened for her, even though she had submitted her claim on August 14. Plaintiff had no reason not to believe him at the time.

74. Even though she was suffering extreme back pain, from September 26 through 29, 2017, Plaintiff conducted the trial in *Porter v. City of Los Angeles*, in which she prevailed. This was a case in which the settlement demand was over $1 million, plus attorneys' fees and costs. (Plaintiff was also very ill with the flu and was running a fever on September 27, but continued with the trial notwithstanding how ill she felt, because she feared she would be disciplined by her supervisor if she requested a one-day continuance.) Plaintiff had to have a friend drive her back and forth to court, because driving greatly

exacerbated her back pain, and because she also needed the commute time for sleeping.

75. On October 3, 2017, shortly after completing the trial, Plaintiff saw Dr. Proano again, and had additional medial nerve branch blocks performed on her lumbar spine.

76. Also in approximately October 2017, Defendant BRENTE asked Plaintiff why others in the Police Litigation Unit were able to get ergonomic equipment with ease, and she had so much trouble. (For example, a male attorney named Geoff Plowden had requested a reasonable accommodation, which he had promptly received.) This was a harassing comment, since ergonomic equipment had been delivered to Plaintiff's office in July 2016 and, as the requesting department supervisor, Defendant BRENTE was the very person who should have made arrangements for the equipment to be set up and installed. Incredibly, Defendant BRENTE suggested to Plaintiff that she install the ergonomic equipment herself which, among other things, would have required drilling a large hole in the desk to attach the monitor arm. Defendant BRENTE seemed to take enjoyment from the fact that Plaintiff was enduring intense pain, while the ergonomic equipment sat in Plaintiff's office, still in boxes, taunting her. Plaintiff told Defendant BRENTE he was harassing and discriminating against her based on her sex and physical disabilities by forcing her to exhaust the vacation and sick leave which she had worked for years to accrue, since obviously it was possible for reasonable accommodations to be provided to male employees in the department – just not to females.

77. Because Defendant BRENTE never assigned anyone to cover Plaintiff's cases when she was out on extended sick leave, Plaintiff returned to work as much as she could, on days the pain was not completely debilitating. She was unable to drive, however, so she could only go to work when she could get a driver, and could only work for a few hours at a time. As a result, she was required to take 76.6 hours of vacation, 9 hours of 100% sick leave, and 27 hours of 75% sick leave during October 2017.

78. On November 1, 2017, Dr. Proano determined that Plaintiff was totally temporarily disabled. Despite that, Plaintiff attempted to work during November 2017, and managed to do so for about the first week of November 2017, even thought the pain was almost unbearable.

79. Despite the fact that: i) Plaintiff had been on FMLA/CFRA leave from approximately March 11 through June 5, 2010 for her spinal surgery, ii) Plaintiff had been on FMLA/CFRA leave from March 11, 2016 through June 5, 2016 for her endometriosis and fibroid uterus, and then for the emergency

hysterectomy and the complications relating to that surgery, iii) Plaintiff had communicated constantly with Defendant BRENTE regarding her various physical disabilities, and had answered many more questions regarding the details of her physical disabilities and serious health conditions than she was legally required to, iv) Plaintiff had been attempting to get ergonomic furniture which would at least lessen her back pain **since early 2011,** v) Defendant BRENTE was the person responsible for having the ergonomic items installed but the items had been sitting in boxes in Plaintiff's office since July 2016, vi) Plaintiff had submitted a formal request for reasonable accommodations to Human Resources and met with Human Resources about this, and vii) Plaintiff had filed a workers' compensation claim on August 14, 2017, on November 7, 2017, Defendant BRENTE saw fit to issue a formal Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties she was having at work due to her physical disabilities.[10]

80. On November 8, 2017, when Plaintiff was literally at the doctor for the purpose of obtaining a note which Vivienne Swanigan (Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division) had said was required, Plaintiff received a call, ordering her back to the office to receive her Notice to Correct Deficiencies. The meeting was attended by Defendant BRENTE, Plaintiff, union representative Oscar Winslow, and a woman (name unknown) from the Personnel or Human Resources Department. During this meeting, Plaintiff described in detail all the health issues which were making it difficult for her to work regular hours, including the health issues she was having related to her severe menopause (severe hormone imbalance), her auto-immune disorder, her hypothyroidism, and her lumbar spine disability. Plaintiff explained that much of the time when she was late to work, it was because she required so much sleep because of the extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, or because she was groggy due to having been forced to take pain medication for her lumbar spine disability. She again requested reasonable accommodations for all her physical disabilities. Rather than discuss what reasonable accommodations might be possible, Defendant BRENTE said to Plaintiff, right in front of Oscar Winslow and the woman from Personnel, "We all know the workers' comp claim is bullshit." This was an accusation of Plaintiff

[10] According to the Notice to Correct, Defendant BRENTE accused Plaintiff of having unsatisfactory job performance from June 21, 2017 through September 29, 2017 – the very day Plaintiff received a favorable jury verdict in *Porter v. City of Los Angeles.*

committing an illegal act (workers' compensation fraud).[11] Plaintiff pointed out that the Notice to Correct Deficiencies dwelled **solely** on difficulties she was having at work due to her physical disabilities, and for which she had been requesting reasonable accommodations for seven years, and complained that this constituted harassment and discrimination based on her physical disabilities. Plaintiff also complained she was being discriminated against and harassed based on her sex because she did not believe male employees were being disciplined for having physical disabilities, and of course male employees did not have menopause issues. Plaintiff also complained she was being punished for using accrued sick leave, which she only had to use because Defendants refused to provide the reasonable accommodations she required.

81. At this point, Plaintiff became suspicious regarding the lack of any action on her workers' compensation claim, so she began to investigate. On November 8, 2017, she finally got in contact with Lisa Herron, ACME Claims Adjuster, who told Plaintiff her workers' compensation claim had been denied because Defendant BRENTE told Ms. Herron Plaintiff was not at work, and he did not know how to reach her! This was not true, since Defendant BRENTE knew how to reach Plaintiff by phone, text message, or email.

82. By November 26, 2017, Plaintiff was in such severe back pain that she had to use accrued vacation and sick leave through January 20, 2018. Plaintiff used various types of accrued leave during this period. While Plaintiff was on sick leave, Defendant BRENTE again failed to assign sufficient personnel to cover Plaintiff's cases. Plaintiff complained to David Trujillo that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated. Plaintiff also complained to David Trujillo that Defendant BRENTE was harassing and discriminating against her by failing to assign sufficient personnel to cover her cases while she was on sick leave, which caused deadlines and due dates to be missed, for which she was being blamed. Plaintiff did not work voluntarily from home during this

[11] Plaintiff actually prevailed in that workers' compensation claim, so apparently it was not "bullshit."

period of vacation and sick leave.[12]

83. On December 7, 2017, Plaintiff finally learned from David Trujillo (of the Human Resources Department) that she could reopen her workers' compensation claim by completing and returning some medical release forms, and submitting to an examination by a Qualified Medical Examiner. She returned the signed forms and began arranging for the examination.

84. On December 13 and 20, 2017, Plaintiff attempted to undergo a radiofrequency ablation procedure and a facet rhyzotomy, but had a bad reaction to the anesthesia, so the procedures could not be completed on those dates. As a result of her continuing back pain, on December 20, 2017, Plaintiff's doctor wrote a note stating Plaintiff was unable to work from November 16, 2017 through January 15, 2018. She was finally able to have the radiofrequency ablation of the right L3-5 medial branch nerves on January 22, 2018.

85. Plaintiff had hoped to return to work on January 21, 2018, but was unfortunately unable to return to working full-time on that date. She therefore took intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018. Plaintiff used accrued vacation and sick leave during this period. Once again, Defendant BRENTE failed to assign sufficient personnel to cover Plaintiff's cases, and once again Plaintiff complained to Defendant BRENTE that this constituted discrimination and harassment based on her physical disabilities and sex, and for taking FMLA/CFRA leave.

86. On January 29, 2018, Plaintiff had her annual medical examination at HealthCare Partners. Among other things, she was diagnosed as having anxiety disorder, depression, hypothyroidism, insomnia, sciatica, vitamin D deficiency, difficulty concentrating, elevated blood pressure, elevated liver enzymes, greater trochanteric bursitis, menopause syndrome, muscle spasms, and neurodermatitis. She was taking numerous prescription medications for these conditions. Plaintiff was also treating with her gynecologist (who was not part of HealthCare Partners), and was being prescribed hormone replacement and other medications related to her menopause syndrome by the gynecologist.

87. On February 7, 2018, Plaintiff's physician (Dr. Proano) wrote a note indicating she was able

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[12]Plaintiff was afraid she would be criticized for voluntarily working during her leave since, on November 7, 2017, Defendant BRENTE had issued Plaintiff a formal Notice to Correct Deficiencies which dwelled **solely** on difficulties she was having at work due to her physical disabilities.

to return to work on February 12, 2018, but only to "light" work duties, and only with the following restrictions/accommodations: "no bending, stooping, lifting, sit no more than 1 hour, standing no more than 1 hour."

88. Plaintiff did return to work, full-time, on February 12, 2018. On that day, she submitted the February 7, 2018 note from Dr. Proano regarding her restrictions, along with the three ergonomic prescriptions from Dr. Proano – one for an ergonomic keyboard drawer, one for an ergonomic chair, and one for a stand-up desk – to the Human Resources Department. The Human Resources Department told Plaintiff she needed to have **yet another** ergonomics evaluation. It had been **two years** since Plaintiff had the first ergonomic evaluation, when the Occupational Safety and Health Division had determined that she needed a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. (Those items had never been delivered, or were still in boxes in Plaintiff's office, needing to be un-boxed and installed.) It had also been **over two years** since Plaintiff's doctor initially prescribed an ergonomic chair, and **one year** since her doctor had initially prescribed a stand-up desk.

89. Amazingly, David Trujillo told Plaintiff it could be **months** before they would be able to get her the ergonomic evaluation. Plaintiff complained to David Trujillo that there were still boxes of ergonomic equipment in her office which had never been opened and installed. She told David Trujillo that her back would start aching within an hour of her sitting at her desk, and she was afraid sitting in that chair would seriously exacerbate her spinal disability. David Trujillo did not seem interested in getting the ergonomic equipment installed, and said they might have to put Plaintiff on administrative leave until they could conduct yet another ergonomic evaluation and get the new equipment in place.

90. On February 14, 2018, in what can only be viewed as an outright refusal to accommodate Plaintiff's disability, the Human Resources Department sent Plaintiff an email stating that she would have to completely re-start the ergonomic evaluation process. Plaintiff reminded Human Resources that she had originally started requesting an ergonomic evaluation process in early 2011, the ergonomic evaluation had finally been performed on February 1, 2016, and, although the boxed ergonomic items were finally delivered to her office in July 2016, none of the equipment had been set up.

91. Also on February 14, 2018, Plaintiff met with David Trujillo to discuss accommodation of the work restrictions which were listed on the February 7, 2018 note from her doctor (no bending, stooping,

or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). During this meeting, Plaintiff complained to David Trujillo that Defendant BRENTE and EMPLOYER Defendants were harassing and discriminating against her because of taking FMLA/CFRA leave, and based on her physical disabilities and her sex, for the same reasons as discussed above. On February 23, 2018, David Trujillo sent an email in which he stated that Plaintiff's request was with "Personnel to see if they had equipment readily available. If not available, she would be placed on the list for them to order."

92. On February 27, 2018, Plaintiff drove to Pasadena, where she conducted a six-hour deposition. The combination of driving to Pasadena, sitting for six hours, then driving back to San Pedro greatly exacerbated Plaintiff's back injury. She could not return to work because her ergonomic furniture and equipment had still not been installed. She attempted to work from home (from February 28, 2018 through March 8, 2018), but this reasonable accommodation was later denied her.

93. Plaintiff saw Dr. Askari again on March 7, 2018, and Dr. Askari noted complications of menopause, the presence of thyroid issues, and the presence of an unknown auto-immune disorder.

94. On March 8, 2018, Defendant BRENTE sent Plaintiff an email in which he admonished her for not keeping up with her work while she was in excruciating pain and trying to work from home. Since it was clear that EMPLOYER Defendants were not going to provide Plaintiff with ergonomic furnishings and equipment, and since the reasonable accommodation of working from home was being denied her, Plaintiff gave up trying to work from home and, on March 12, 2018, notified Human Resources of her need to take FMLA/CFRA leave, beginning (retroactively) on March 8, 2018, and ending on April 9, 2018.

95. The very next day (on March 13, 2018), her anniversary date step was denied/withheld for one year – something which is virtually unheard of. Since she should have already been a Deputy City Attorney IV, Step 10, at this point, she should have been promoted to Deputy City Attorney IV, Step 11, but was instead trapped at the Deputy City Attorney III, Step 14, level. This refusal to promote Plaintiff was a direct result of her sex, her physical disabilities, her repeated requests for accommodation, her repeated requests for an interactive dialogue/process, and for her taking FMLA/CFRA leave. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 11, or higher.

96. Also on March 13, 2018, Plaintiff was examined by Qualified Medical Examiner Leon Brooks, M.D. After reviewing medical records and examining Plaintiff, Dr. Brooks determined that Plaintiff was "temporarily totally disabled." He also ordered that Plaintiff obtain an MRI of her spine, and electrodiagnostic studies.

97. On March 14, 2018, Plaintiff's request for FMLA/CFRA leave was approved for the period March 8 through April 9, 2018. Plaintiff was required to use approximately 168 hours of accrued (75%) sick leave during this period. Plaintiff again complained to David Trujillo that she was being discriminated against for taking FMLA/CFRA leave and also because of her sex and physical disabilities, by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

98. Plaintiff had hoped to return to work on April 10, 2018, as had been planned, but was physically unable to do so. (She attended a LACERS meeting, but was in so much pain afterward, she had to go home.) Plaintiff missed work on April 11, 2018 due to a death in the family. She returned to work on April 13, 2018. On April 17, 2018, Plaintiff obtained the MRI which had been ordered by Dr. Brooks (QME). By April 25, 2018, Plaintiff was in so much pain she could not work. She therefore requested to take a FMLA/CFRA leave of absence, but months went by without her receiving a response.[13] On May 8, 2018, Plaintiff obtained the electrodiagnostic studies which had been ordered by Dr. Brooks.

99. On June 8, 2018, David Trujillo told Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment. David Trujillo gave no indication regarding when the equipment was expected to arrive.

100. Amazingly, the very next day (June 9, 2018), Plaintiff's health benefits were terminated without notice, without a response to her April 25, 2018 request to take FMLA/CFRA leave, and without

[13] Eventually, on September 21, 2018, Human Resources sent a letter stating that Plaintiff was being granted a "personal medical leave of absence . . . as a reasonable accommodation for the continuous period of April 25, 2018 through October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018.

the ergonomic equipment being installed in her office, which would have allowed her to return to work. Plaintiff received no notice of the termination of her health insurance benefits from EMPLOYER Defendants. Rather, she learned of the termination of benefits from one of her medical providers. EMPLOYER Defendants terminated the health insurance of Plaintiff, who they knew had numerous health issues, without even giving her notice.

101. Then on June 12, 2018, even though Plaintiff had filed a workers' compensation claim on August 14, 2017, and had been declared "temporarily totally disabled" by Dr. Brooks (QME) on March 13, 2018, David Trujillo notified Plaintiff that she was out of vacation and sick leave and had no more FMLA/CFRA time, so she would need to apply for short-term disability insurance. On June 13, 2018, Plaintiff asked David Trujillo to send her the paperwork which was necessary to apply for disability insurance. The application paperwork was provided, and Plaintiff applied for disability insurance on June 13, 2018 with Standard Insurance Company (under the City of Los Angeles group policy). Standard Insurance indicated it would respond by August 3, 2018.

102. On July 10, 2018, Dr. Brooks (the QME) issued a supplemental report in which he stated the following findings:

- Plaintiff should be precluded from repeated bending and stooping, lifting of weight in excess of 15 pounds, prolonged sitting or prolonged standing.
- Plaintiff will not be able to return back to her prior position in view of the physical requirements. He therefore considers her to be a qualified injured worker.
- He believes that 60% of Plaintiff's present impairment is related to her present injury of August 14, 2017 and 40% is related to her condition prior to the specific injury of August 14, 2017.
- Plaintiff remains with 8% impairment of the whole person per DRE lumbar category 2 of Table 15-3 page 383 of the AMA Guidelines Fifth Edition.

103. On July 13, 2018, David Trujillo sent Plaintiff an email in which he wrote:

> Your department has changed your status to Part Time Intermittent and that is what has cancelled your benefits.
>
> This status automatically cancels benefits by the payroll file provided to our TPA.

Amazingly, although EMPLOYER Defendants had removed Plaintiff from payroll and terminated her health insurance benefits on June 9, 2018, they did not bother to tell Plaintiff until over a month later, on July 13, 2018.

104. When Plaintiff did not hear anything by August 3, 2018, she contacted Standard Insurance Company and was told her claim was "on hold" because Standard Insurance was waiting for information from EMPLOYER Defendants. Standard Insurance said it had sent Defendant CITY a follow-up, but had still not heard back. Therefore, on August 3, 2018, Plaintiff wrote to David Trujillo, asking that he inquire into the status of her disability insurance application.

105. Plaintiff's disability insurance claim was eventually processed, and was denied by Standard Insurance on September 17, 2018; she is currently in the process of appealing. No progress was made on Plaintiff's workers' compensation claim during this time.

106. Plaintiff's request for a medical leave of absence took **almost five months** – from April 25, 2018 to September 21, 2018 – to be granted, leaving Plaintiff in fear of her employment being terminated due to her being unable to work as a result of her disabilities. Eventually, on September 21, 2018, Human Resources sent a letter stating that Plaintiff was being granted a "personal medical leave of absence . . . as a reasonable accommodation for the continuous period of April 25, 2018 through October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018, during which time 64 hours of Plaintiff's accrued vacation and 437 hours of Plaintiff's accrued sick leave were used. The remainder of the leave time was unpaid. To term this a "personal medical leave of absence . . . as a reasonable accommodation" is inaccurate, since the leave was FMLA/CFRA leave from April 25, 2018 through June 9, 2018, and after that it was unpaid leave without health insurance. This was therefore not a "reasonable accommodation." A true accommodation would have been to actually install the ergonomic equipment and furnishings which Plaintiff required, so she could be working, getting paid, and receiving health insurance and other benefits of employment.

107. On October 15, 2018, Plaintiff's attorneys sent a 36-page letter to Zna Portlock Houston, Special Counsel Personnel Standards and Employee Engagement (Office of the Los Angeles City Attorney), in which they requested a response by November 1, 2018. **To this date, no response has been provided.**

108. On October 16, 2018, Plaintiff submitted a complaint to EMPLOYER Defendants' Office

of Discrimination Complaint Resolution. In that complaint, Plaintiff alleged discrimination based on disability and sex, and for taking FMLA/CFRA leave, and further alleged she had been subjected to a variety of harassing and discriminatory treatment, including several adverse employment actions.

109. On October 16, 2018, Plaintiff's physician wrote a note stating that she could return to work with the following restrictions/accommodations: "no bending, stooping, standing for more than 1 hour. Stand up desk and ergonomic chair [required]."

110. Plaintiff returned to work on October 17, 2018. When she arrived at her office, she discovered that her desk had been set up with two monitors and a soft desk pad for standing (which were both things she needed), but that the electric high-adjustable desk and electric high-adjustable chair which she understood had been ordered, had still not arrived. Plaintiff had previously submitted a note which Dr. Proano had written on February 7, 2018, indicating she could only perform "light" work duties, and only with the following restrictions/accommodations: "**no** bending, stooping, **lifting**, sit no more than 1 hour, standing no more than 1 hour." [Emphasis added.] EMPLOYER Defendants were aware of this because, on February 14, 2018, Plaintiff met with David Trujillo to discuss accommodation of the work restrictions which were identified in the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). Then, on July 10, 2018, Dr. Brooks (EMPLOYER Defendants' designated QME) stated: "Plaintiff should be precluded from repeated bending and stooping, **lifting of weight in excess of 15 pounds**, prolonged sitting or prolonged standing." EMPLOYER Defendants were therefore well aware that Plaintiff was unable to raise and lower a stand-up desk and/or stand-up chair manually several times per day, and had a duty to provide Plaintiff with the electric high-adjustable desk and electric high-adjustable chair which she required in order to be able to perform her job.

111. On October 17, 2018, Plaintiff managed to work from 9:00 a.m. to 6:30 p.m., despite the severe back pain she was experiencing. On October 18, Plaintiff again worked a full day – from 9:45 a.m. to 7:00 p.m. On October 19, the pain was so bad when she awoke, she was not able to drive downtown until after she had been up for a while and had taken more pain medication. She therefore worked from 11:45 a.m. to 5:45 p.m.

112. Unfortunately, as a result of pushing her body, and working without the benefit of the

ergonomic equipment she was supposed to have, Plaintiff experienced excruciating back pain for the next three days, and was unable to report to work on Monday, October 22, 2018. Her attendance was very sporadic the next couple weeks because of the back pain she was suffering due, at least in part, to the lack of ergonomic furnishings and equipment.

113. Every day Plaintiff was late to work, or unable to go to work at all, she texted Defendant BRENTE and advised him of her status. Sometimes he responded, but sometimes he did not. Plaintiff has told Defendant BRENTE she still needs 10 hours of sleep per day. If she has back spasms, she needs to take a pain pill, and take a hot shower. On mornings the pain is so severe that she has to take two pain pills, then she cannot drive. In late October 2018, Plaintiff explained to Defendant BRENTE that she was unable to obtain a new note from her doctor, because she was still without health insurance.

114. Plaintiff worked full days on October 30 and October 31, 2018. On October 30, 2018, Plaintiff spoke with one of EMPLOYER Defendants' attorneys regarding her workers' compensation claim. He told Plaintiff no decision had been made by the workers' compensation insurance carrier regarding the claim she had submitted on August 14, 2017. Despite Dr. Brooks' July 10, 2018 findings, Plaintiff's workers' compensation claim has still not been processed by EMPLOYER Defendants. This means the payroll department has not credited back Plaintiff's sick leave and vacation accounts. Plaintiff has also not been paid any money for her workers' compensation claim, and also has not even been paid for working October 30 and 31, 2018.

115. On Thursday, November 1, 2018, Plaintiff became extremely ill, with a very high fever, and was diagnosed as probable Viral Meningitis. Plaintiff's physician (Terry Ishihara, M.D.) wanted to admit Plaintiff to the hospital, but she declined to go because of being without health insurance. Plaintiff could not even have blood tests performed because of the lack of health insurance. Dr. Ishihara advised Plaintiff that she would need to stay in bed for at least a week, and probably longer. On November 1, 2018, Plaintiff advised both Defendant BRENTE and HR Analyst David Trujillo that she was sick, that she probably had Viral Meningitis, and that her doctor had advised at least a week of bed rest.

116. On Monday, November 5, 2018, persons from the Police Litigation Unit started emailing Plaintiff assignments to do at home. Not only was Plaintiff very ill, but she did not have any of the files she would need in order to do the work she was being assigned anyway. Plaintiff notified both the Police

Litigation Unit and David Trujillo of these facts.

117. On November 8, 2018, Plaintiff learned that her health insurance had been reactivated.[14] Plaintiff was still very ill at this time. Her fever was not as high as previously, but she was still suffering from fever, headaches, chills, and severe vertigo. On November 20, Plaintiff's physician said it could take up to two weeks for her to recover from what, at that point, had been diagnosed as Viral Meningitis. Plaintiff's physician provided her with a note stating she could not return to work until December 3, 2018.

118. While Plaintiff was at the doctor on November 20, she had blood drawn for the purpose of testing for typhus. On November 27, 2018, Plaintiff learned she had typhus (specifically, typhus fever Group IgG, IgM). Typhus is a very serious disease, which can be fatal if left untreated. Typhus can cause Viral Meningitis. Although typhus is highly treatable with antibiotics, Plaintiff could not go to the hospital or even have blood tests until almost three weeks after her symptoms started, because her health insurance had not yet been re-activated (even though she was eligible for re-activation starting October 27, 2018).

119. Plaintiff most likely contracted typhus at City Hall East. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los Angeles. There has been a typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus Zone." Plaintiff's office is only two blocks outside the Typhus Zone.

120. On November 29, 2018, Plaintiff sent an email to Defendant BRENTE, copied to David Trujillo, in which she wrote:

> Given the fact there is a typhus outbreak in Downtown LA I would like to file a workers' compensation claim. Would you please send me the paperwork.
>
> Thank you very much.

David Trujillo replied that he would have "Nancy send over the paperwork." Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE, relating to her typhus diagnosis, on December 1, 2018. In that document,

[14]Plaintiff was eligible for health insurance starting October 27, 2018, but despite Plaintiff urging EMPLOYER Defendants to hurry and get her insurance re-activated, Plaintiff's health insurance was not actually re-activated until November 8, 2018.

Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician phoned me and informed me I tested positive for typhus.

Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

121. Plaintiff did not return to work on December 3, 2018, however, because she was on a planned family vacation through December 10, 2018 plus, as it turned out, she was still ill from the typhus the entire time, so she spent most of the vacation in bed, with intermittent fevers and with severe headaches. Plaintiff planned to return to work on December 11, 2018, but was unable to return for two reasons: 1) She was still suffering from severe vertigo, dizziness, and disequilibrium which are symptoms of typhus; and 2) She feared contracting typhus again, since her office is within two blocks of the Typhus Zone. (Typhus can be contracted repeatedly, and since Plaintiff has an auto-immune disorder, she is at increased risk for contracting typhus. In California, an employee is not required to work under hazardous working conditions which present a serious risk of harm.) Although EMPLOYER Defendants had indicated they had sprayed pesticide in Plaintiff's personal office, the rest of the building had not been fumigated, so Plaintiff would still not be protected from typhus-carrying fleas.

122. On December 9, 2018, Plaintiff learned that her health insurance had been changed from Anthem, to Kaiser Permanente, without anyone even giving her any notice of this change. (Plaintiff found out when she attempted to get a prescription refilled at the pharmacy.)

123. On December 20, 2018, when Plaintiff learned that Defendant CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the typhus outbreak, and the fact that she contracted typhus. Also on December 20, 2018, Cal/OSHA sent a letter to Defendant CITY ATTORNEY'S OFFICE, notifying it that a complaint had been filed and giving it five days to respond. Plaintiff has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

124. Also on December 20, 2018, Plaintiff saw U.S. HealthWorks Medical Group ("U.S.

HealthWorks"), which is the occupational medicine provider designated by EMPLOYER Defendants. The medical provider at U.S. HealthWorks designated Plaintiff as temporarily totally disabled from December 20 to December 21, 2018, and designated Plaintiff as temporarily partially disabled from December 21, 2018 through December 28, 2018. On the Injury Status Report, the medical provider wrote: "No Driving." On the Work Status Report, the medical provider wrote: "The patient has been advised not to drive or operate heavy equipment."

125. Since U.S. HealthWorks was the occupational medicine provider designated by EMPLOYER Defendants, Plaintiff assumed U.S. HealthWorks would notify EMPLOYER Defendants of her work restriction. (In fact, persons at U.S. HealthWorks **told** Plaintiff they would notify EMPLOYER Defendants of Plaintiff's "temporarily partially disabled" status.) Despite this, just to make sure there was no confusion and that her job was protected, on December 21, 2018, Plaintiff advised EMPLOYER Defendants of this work restriction. In her December 21, 2018 email to David Trujillo, Plaintiff wrote:

> I went to the City doctor last night. He has put me on modified duty. My limitation is that I am unable to drive because of the vertigo. He said they would send you a copy of his report with the restriction. I go back on 12/27/18 for a follow up. Please let me know what else you need from me.

Defendants' response was swift and sure. Defendants immediately (that same day, **only three hours later**) sent Plaintiff a letter advising her that she was "absent without leave," and threatening to terminate her. The letter came from HR Analyst David Trujillo, who must know employees are not required to work under hazardous working conditions which present a serious risk of harm.

126. Plaintiff went to U.S. HealthWorks again on December 27, 2018, and the medical provider extended Plaintiff's "temporarily partially disabled" status through January 7, 2019. On the Work Status Report, the medical provider wrote: "The patient has been advised not to drive or operate heavy equipment." Plaintiff emailed the Work Status Report and Injury Status Report to Defendant BRENTE and David Trujillo on December 28, 2018. In her December 28, 2018 email, Plaintiff advised both David Trujillo and Defendant BRENTE that she was available to work from home. (To date, she has not been assigned any work.) Out of an abundance of caution, Plaintiff's employment law attorney also emailed the December 27, 2018 reports from U.S. HealthWorks to Vivienne Swanigan (Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division) on January 7, 2019, and again on

January 10, 2019.

127. Meanwhile, on December 31, 2018, Vivienne Swanigan sent a letter in which she acknowledged Plaintiff's medical reports putting her on leave through December 27, 2018, but ignored the Work Status Report and Injury Status Report Plaintiff had emailed to Defendant BRENTE and David Trujillo on December 28, 2018, and threatened Plaintiff's job by stating Plaintiff was absent without leave. Also in this letter, Vivienne Swanigan (a 33-year attorney, in a very high position in Defendant CITY ATTORNEY'S OFFICE) denied Defendant CITY ATTORNEY'S OFFICE had a duty to reasonably accommodate Plaintiff's disability of being unable to drive due to her severe vertigo. Also, rather incredibly, Vivienne Swanigan stated that Defendant CITY ATTORNEY'S OFFICE does not have access to Plaintiff's workers' compensation case records. Plaintiff had actually submitted her workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE. On the form, Plaintiff identified her illness as: "Typhus. Headache, fever, chills, stiff neck, rash, vomiting, vertigo, exhaustion." Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the December 31, 2018 letter.

128. Plaintiff again went to U.S. HealthWorks on January 7, 2019, and the medical provider extended Plaintiff's "temporarily partially disabled" status through January 21, 2019. Again, the restriction was that Plaintiff was "not to drive or operate heavy machinery." Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on January 8, 2019. Out of an abundance of caution, Plaintiff's employment law attorney emailed the documents to Vivienne Swanigan on January 8, 2019, and again on January 11, 2019. When Plaintiff went to U.S. HealthWorks on January 21, 2019, this same restriction was continued through January 28, 2019. Again, Plaintiff emailed the reports from U.S. HealthWorks to David Trujillo, and Plaintiff's attorney sent them to Vivienne Swanigan.

129. On January 1, 2019, Plaintiff's health insurance was once again terminated.

130. In early January 2019, Plaintiff contacted the Los Angeles County Vector Control District and advised them that she had contracted typhus while working at City Hall East.

131. On January 17, 2019, all named Defendants were served with Plaintiff's Department of Fair Employment and Housing Complaint (which she had filed on January 14, 2019). At Defendant CITY ATTORNEY'S OFFICE, the Complaint was received by Vivienne Swanigan.

132. Also on January 17, 2019, Vivienne Swanigan sent a letter stating that there was "no staff, no equipment, no authorization, and no funds" and "no plan" to fumigate City Hall East. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 17, 2019 letter.

133. It was (and is) the position of Plaintiff and her attorney that EMPLOYER Defendants have a legal duty to reasonably accommodate Plaintiff's commute-related limitations. Plaintiff repeatedly requested of David Trujillo, and Plaintiff's attorney repeatedly requested of Vivienne Swanigan, that Plaintiff's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium which were caused by typhus (which Plaintiff contracted at work) be reasonably accommodated. One such communication was in a January 22, 2019 letter from Plaintiff's attorney to Vivienne Swanigan. Vivienne Swanigan's response, in a letter dated January 25, 2019, was that she would not be communicating with Plaintiff's attorney any further. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 25, 2019 letter.

134. Also on January 25, 2019, Plaintiff filed the original Complaint in this action.

135. Plaintiff again went to U.S. HealthWorks on January 28, 2019, and the medical provider extended Plaintiff's "temporarily partially disabled" status through February 11, 2019. Again, the Work Status Report stated that Plaintiff was "not to drive or operate heavy machinery." The Work Status Report further stated: "In the event that your employee has restrictions and no modified work is made available, employer must keep employee off work unless, and until, such modified work is made available." Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on January 28, 2019, and Plaintiff's attorney emailed the documents to Vivienne Swanigan on January 28, 2019.

136. On January 29, 2019, Plaintiff was interviewed by Joel Grover of NBC 4 local news regarding her typhus. Plaintiff told about contracting typhus while working at City Hall East, and about how sick the typhus had made her. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover for comment.

137. On January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant

BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for her speaking to the media about contracting typhus at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

138. Also on January 31, 2019, Plaintiff appeared on NBC Channel 4 News at 11:00 p.m. where she spoke as described in paragraph 136 above.

139. On February 1, 2019, Plaintiff sent an email to David Trujillo, in reply to his January 31, 2019 email ordering her to report to work. In her email, Plaintiff stated, among other things:

> The conditions in City Hall East are a threat to the health of City employees and to the public health. The City Attorney's office has been contacted by CalOSHA about the threat to public health and has ignored their letter. From my understanding, the City Attorney has not even notified other departments that a City Attorney employee contracted typhus at City Hall East. No one has notified the Mayor's office.
>
> The fact the City Attorney has known of this health threat since November 2018; known that a City employee has been diagnosed with typhus since December 2018; was contacted by Cal/OSHA December 20, 2018; has my medical records proving I have Typhus since January 10, 2019; and has done nothing about protecting the employees or the public entering the building is obscene. The City Attorney has not even notified others in the building that an employee was infected so they know of their exposure there or they can take precautions. I would also add that the rat problem at City Hall East is not new. This has been going on for years, and the City and the City Attorney's Office allowed the infestation to get so out of control that people are being exposed to a disease which is most often associated with devastating epidemics from the Middle Ages.
>
> I have been employed by the City Attorney's Office for over 22 years, and am being treated like the trash which is lining the streets around City Hall East. I seriously doubt a male who is a 22-year deputy city attorney and contracted Typhus on the job would be treated as I have been and am being treated. I should not be surprised, though, as this discrimination on the basis of sex has been consistent behavior by the City Attorney's Office over the years.

> I implore the City and the City Attorney's Office to protect the City employees, clients, co-counsel and opposing counsel, witnesses, contractors, and the public from this public health crisis you are allowing to continue.

140. Also on February 1, 2019, EMPLOYER Defendants were served with the Complaint in this matter.

141. Also on February 1, 2019, Plaintiff was featured in the *Daily Mail* in an article called "LA City Hall Official Is the Latest Struck by TYPHUS in the City's Raging Epidemic." The article reads, "Liz believes the rats that nestle in the building's trash were carrying fleas that transmitted the disease." The article further reads: "She has yet to go back to work, and is calling on the city to fumigate the building before she does 'because I thought I was going to die.'"

142. On February 4, 2019, Plaintiff sent an email to David Trujillo in which she accused EMPLOYER Defendants of retaliating against her for suing for her rights under the FEHA.

143. Also on February 4, 2019, Plaintiff was interviewed on John and Ken (KFI AM 640 Radio and Podcast) and she spoke at length about the typhus outbreak, about the fact that she had contracted typhus while working at City Hall East, and about the fact that Defendant CITY and Defendant CITY ATTORNEY'S OFFICE had refused to fumigate.

144. On or about February 5, 2019, Plaintiff told Oscar Winslow, President of the Los Angeles City Attorneys Association (LACAA), about her typhus diagnosis. Mr. Winslow was very surprised, since no one at Defendant CITY ATTORNEY'S OFFICE had told its employees anything about protecting themselves from typhus-carrying fleas. Something as simple as advising employees to wear boots would have provided them a small amount of protection.

145. On February 6, 2019 (only three workdays after EMPLOYER Defendants were served with the Complaint in this matter, and within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her new work location at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this

position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

146. On February 7, 2019, Plaintiff was interviewed to appear on the Channel 5 11:00 a.m. News, on the Channel 11 News at 1:00 p.m., and on John and Ken (on KFI AM 640 Radio and Podcast) at 3:00 p.m.

147. Also on February 7, 2019, Plaintiff was featured in an article in the *Los Angeles Times* titled " L.A. City Hall, overrun with rats, might remove all carpets amid typhus fears." This article discusses the rat infestation at City Hall and a proposition to remove all of the carpet from City Hall and the adjoining buildings. Plaintiff was featured in the article and was quoted as saying:

> I am actually terrified of entering the building again until they do something" and "that carpet is years old – and, more than likely, it has fleas and flea eggs in it" and "I would really like to see the building fumigated for both rats and fleas . . . I hope they don't wait.

148. Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the typhus epidemic and about the fact that she contracted typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

149. The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with

instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch. Plaintiff replied via email, stating:

> We are preparing a response to your sudden and unexpected change demotion in my job to an entry level assignment I have not done in over 20 years. The airport courthouse is not accessed by train and will require a two mile walk and three separate bus rides. It is more complicated than City Hall East. Further, as you are aware since you have had the document for two weeks, I have a doctor's appointment at US HealthWorks in downtown at 1:30 in the afternoon. Is someone driving me there and back? You should know the appointments may take up to 4 hours. I will have to leave the airport shortly after arrival in order to make my appointment if you are expecting me to take public transportation.
>
> I am wondering if this demotion is until OSHA clears the building and I am able to enter without putting my life at risk.

150. On Saturday, February 9, 2019, Plaintiff was mentioned in an article in the *Los Angeles Times* titled "L.A. officials target vermin at City Hall." On Sunday, February 10, 2019, Plaintiff was featured in an article on the front page of the "California" section titled, "She's 'the canary in the coal mine.'" Plaintiff's photograph was included, with a caption which read: "L.A. DEPUTY CITY ATTY. Elizabeth Greenwood said flea bites at City Hall gave her typhus. Her bosses didn't believe she had the disease, she said."

151. On February 11, 2019, Plaintiff once again went to U.S. HealthWorks, where she was once again designated as "temporarily partially disabled." Since Plaintiff was going to see the City-designated infectious disease specialist on February 14, the doctor at U.S. HealthWorks extended her disability period only through February 14, 2019. Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on February 11, 2019.

152. Also on February 11, 2019, Plaintiff sent David Trujillo a very long email, stating her objections to the demotion to the Pacific Office, Criminal Branch (handling misdemeanor arraignments at the LAX courthouse). Among other things, Plaintiff wrote:

> In early December 2018, I reported the typhus danger to Los Angeles County Health Department, Acute Communicable Disease Department. On December 20, 2018, I reported the typhus danger at City Hall East, and the City Attorney's refusal to take any action to protect its employees, to Cal/OSHA. In early January 2019, I reported the same health dangers the City Attorney was knowingly allowing to persist to Los Angeles County Vector Control District.

> I also filed a complaint with the Department of Fair Employment and Housing, which was served on the City Attorney's Office on January 17. Later in January, after the City Attorney's office continued to stonewall me over the public health issue it was allowing to persist, I started talking to NBC. I talked to Joel Grover about the failure of the City Attorney's Office to protect me and then for the past several months its employees (and the members of the public who visit City Hall and City Hall East) from typhus. We discussed at length the City Attorney's Office had known about this for months and had not even sent a department wide email warning employees about the danger they faced.
>
> The day after the City Attorney's administration received a call from Joel Grover regarding safety precautions taken after my diagnosis, on January 31, you sent me an email once again ordering me back to work "or else," despite the orders from U.S. HealthWorks – the City's own industrial medicine provider. You falsely stated "driving or operating heavy equipment" is not an essential function of my job. I replied to your email by my email dated February 4. In case you do not recall the contents of my email, I stated:
>
> The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .
>
> How the City Attorney could knowingly expose its employees to this horrible bacteria is shocking to me. The fact it knowingly exposes the public, who enters the building every day to conduct business, is criminal. The fact that you, Vivienne Swanigan, and the City Attorney's office are retaliating against me for standing up for my legal rights and for speaking out and telling people the danger they face walking into that building is unconscionable. . . .
>
> My loud and repeated whistling to the Department of Fair Employment and Housing, the Los Angeles Superior Court, Cal/OSHA, the Los Angeles Vector Control District and the media has resulted not in the City Attorney's Office doing the right (and smart) thing, but instead in you (and Vivienne Swanigan) sending the February 6, 2019 email in which you advise me that I am being transferred to the airport courthouse, where I will be a misdemeanor line deputy doing misdemeanor arraignments. This is so obviously a demotion it constitutes unlawful retaliation under common law and several sections of the Labor Code. (My attorney is currently amending the lawsuit to include the latest acts against me.)

153. On February 12, 2019, David Trujillo sent an email to Plaintiff in which he stated:

> [I]t appears you are rejecting the assignment to the Pacific Branch as a reasonable accommodation. Therefore, we will continue to look for alternative positions; however, at present, no positions are available in the Port or Harbor area. In the meantime, as a reasonable accommodation, the Office will allow your Personal Medical Leave for yesterday, Wednesday, and Thursday [February 11, 13, and 14] and will utilize your 75% sick time

> for those days, as requested. The Office will also credit you with 4 hours for your participation in the reasonable accommodation process this pay period in order to allow you to reach the 40 hour threshold needed to maintain your medical coverage.

(Plaintiff had attended a LACERS meeting all day on Tuesday, February 12; her mother drove her to the meeting and her domestic partner drove her home.)

154. On February 13, 2019, Plaintiff filed a complaint with the U.S. Department of Occupational Safety and Health Administration (Federal OSHA) alleging retaliation for filing a complaint with Cal/OSHA regarding safety and health hazards at her workplace.

155. On February 14, 2019, Plaintiff saw infectious disease specialist Richard T. Sokolov, M.D. (another City-designated doctor). Dr. Sokolov directed that Plaintiff be off work for the next three weeks. Dr. Sokolov told Plaintiff that since she was still suffering from vertigo, her brain had not recovered from the typhus, so she should not be working. Dr. Sokolov also stated it was his professional opinion that Plaintiff had contracted the typhus while working at City Hall East.

156. Also on February 14, 2019, Plaintiff sent another very long email to David Trujillo. Among other things, Plaintiff wrote:

> . . . I object to the term "Personal Medical Leave" since this is leave which is necessary because of an on-the-job injury, and for which I have filed a workers' comp claim. I am also confused regarding what this means. It is not clear to me whether the medical leave is intended to be from now until the City Attorney's Office comes up with an appropriate reasonable accommodation, or whether it is only for Monday, Wednesday, and Thursday of this week. That question is probably not that important now, though, because today I saw the infectious disease doctor Richard Sokolov, M.D. (who U.S. HealthWorks referred me to and will be my industrial injury treating physician), and he put me off work for three weeks, effective today. A copy of Dr. Sokolov's prescription placing me off work is attached to this email.
>
> I cannot tell you how disappointing it is to see the level of indifference the City Attorney's office has shown to me, to the safety of the employees who work in City Hall East, and to the health of the members of the public forced to come to the building to conduct their business with the City. This office has been on notice of my illness since November 27, 2018. Their failure to act, their failure to even notify people of the danger they face walking into the building is grossly negligent and a complete abdication of the public trust.

157. On both Saturday, February 16, and Sunday, February 17, Plaintiff was again mentioned in articles in the *Los Angeles Times* regarding the typhus epidemic and the rat and flea infestation at City Hall

and City Hall East.

158. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

159. Later on February 22, 2019, Plaintiff sent an email to David Trujillo in which she wrote:

> I received your letter granting personal medical leave until March 7, 2019, due to my recovering from the typhus I contracted at work. My next doctor's appointment is March 14, 2019, so I am unsure how you wish for me to go to work, or to where you expect me to report prior to my next doctor's appointment. I will not have a medical release before that appointment.
>
> I have still not received a phone call from anyone at the City Attorney's office inquiring about my health. I mention that because it is shockingly rude and insensitive. Nor have I received any communication whatsoever that resembles a conversation about what would be a reasonable accommodation after management let the health and cleanliness conditions in City Hall East reach the point that I almost died. I have only received orders to show up at different work sites for different jobs.
>
> Our last communication involved my unilateral and involuntarily transfer. I called my association for assistance because involuntary transfers involve the MOU, and in my case also violate Whistleblower statutes. . . . I asked you with which supervisor I should begin the grievance process. You replied characterizing my response as a refusal of your reasonable accommodation but never answered my question about which supervisor I should contact.
>
> Based on your response I incorrectly assumed that transfer was not going to happen. Julie San Juan was included in today's email, but not Cory Brente. Should I assume the office is continuing with the illegal unilateral involuntary transfer?
>
> I look forward to your rapid response.

160. David Trujillo responded (on February 22) that the transfer to the Pacific Office, Criminal Branch was "no longer happening," but he gave no indication regarding whether anything *would* be happening.

161. As of this date, Plaintiff has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated. Additionally, the electric high-adjustable desk and electric high-adjustable chair which Plaintiff requires in order to be able to work without extreme pain to her lumbar spine have still not been delivered to her office. (Having to bend over and manually lower or raise a desk and chair several times per day is counterproductive to accommodating Plaintiff's lumbar spine injury.)

162. Plaintiff has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. (The Los Angeles Police Department buildings have been fumigated on about October 10, October 26, and December 14, 2018.) Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East.

163. Plaintiff's most recent medical leave expired March 7, 2019. She has been unable to see Dr. Sokolov again to either have her leave extended or be cleared to return to work, because her workers' compensation claim had been closed, either by Defendant CITY or by its workers' compensation administrator, Elite Claims, even though Plaintiff continues to suffer from lingering symptoms of typhus.

164. Plaintiff remains under the care of her general physician (Terry Ishihara, M.D.), her pain management doctor (Fabian Proano, M.D.), her gynecologist (Reza Askari, M.D.), and her endocrinologist (Olga Caloff, M.D.) for treatment of all her medical conditions except the typhus. For the typhus, Plaintiff is still being treated by the doctors at United HealthWorks, and the City-designated infectious disease specialist, Richard T. Sokolov, M.D.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITIES

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(a)]

[Against EMPLOYER Defendants and DOE Defendants]

165. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

166. At all relevant times for purposes of this Complaint, the FEHA was in full force and effect and binding on Defendants. The FEHA provides:

> It is an unlawful employment practice, unless based upon a bona fide occupational qualification . . . (a) For an employer, because of the . . . physical disability . . . of any person, to . . . discriminate against the person in compensation or in terms, conditions, or privileges of employment.

[Gov. Code § 12940(a).]

167. As defined by the FEHA, "physical disability" includes:

> 1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
>
> A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal . . . , reproductive, . . . skin, and endocrine.
>
> B) Limits a major life activity. . . .
>
> 2) Any other health impairment not described in paragraph (1) that requires special education or related services.
>
> 3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.
>
> 4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.
>
> 5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that

> has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

[Gov. Code § 12926(m).]

168. At all relevant times herein, Plaintiff was a disabled person within the meaning of Government Code sections 12926(m) and 12926.1(b) because she was a person with numerous actual disabling or potentially disabling in the future, physical disabilities.

169. Plaintiff's physical disabilities include, but are not limited to:

a) A severe musculoskeletal disability of the lumbar spine, which has required surgery, steroid injections, selective root blocks, and numerous other treatments;

b) Reproductive disabilities including an emergency hysterectomy, an abrupt menopause, and numerous complications of menopause including, but not limited to, needing to sleep up to 16 hours per night, memory loss, difficulty concentrating, and inability to think or reason at her normal level;

c) A skin disability consisting of rashes, itchiness, and skin which was constantly sweaty, causing it to be difficult for her hysterectomy incision to heal, and causing her to develop a postoperative wound infection;

d) An immunological disability consisting of an unspecified auto-immune disorder, which contributes to Plaintiff's need to sleep up to 16 hours per night;

e) An endocrine disability consisting of hypothyroidism and extreme hormone imbalances, which contributes to Plaintiff's need to sleep up to 16 hours per night; and

f) A neurological disability consisting of extreme vertigo, dizziness, and disequilibrium which were caused by typhus, and which prevent Plaintiff from being able to drive.

170. At all relevant times herein, Defendants had notice of Plaintiff's disabilities, need for medical treatment, need for accommodations, and need for protected medical leave.

171. Defendants knew about Plaintiff's lumbar spine disability beginning in late 2009/early 2010, because Plaintiff told both her immediate supervisor, Sonja Dawson, and the Human Resources Department that she had been diagnosed with severe lumbar radiculopathy and was receiving lumbar epidural steroid injections and selective nerve root blocks. In March 2010, Plaintiff underwent spinal surgery, and she

notified her immediate supervisor and the Human Resources Department of this at the time.

172. In September 2010, Plaintiff informed her new supervisor in the Housing Enforcement Department of her lumbar spine disability, and about the pain she was having, especially when sitting in her desk chair at work (at her office in the San Pedro City Hall). Over the next few months, Plaintiff repeatedly told Jonathan Galatzan about the pain she was experiencing while sitting, but Defendants failed to initiate a timely, good-faith, interactive process or do anything else regarding Plaintiff's complaints of pain caused by sitting at her desk.

173. Over the years, Plaintiff told all her immediate supervisors, numerous people in EMPLOYER Defendants' Human Resources and Personnel Departments (including the Occupational Safety and Health Division of Defendant CITY's Personnel Department) about her lumbar spine disability and her need for accommodations. For example, Plaintiff told Donald Cocek (starting in about November 2011), Defendant BRENTE (starting in about June 2013), Wanda Hudson (starting in about January 2016), Daniela Zaccaro (starting in about February 2016), Cristina Sarabia (starting in about June 2016), and David Trujillo (starting in about July 2017), among others, about her lumbar spine disability and her need for accommodations. On August 14, 2017, Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE for her lumbar spine injury.

174. Plaintiff also told numerous other persons who were agents and/or employees of EMPLOYER Defendants about her need for work restrictions and for reasonable accommodations for her lumbar spine (musculoskeletal) disability starting in late 2009 or early 2010, and continuing to the present. She even submitted prescriptions from her doctors relating to such restrictions as bending, stooping, lifting, sitting for more than one hour, and standing for more than one hour, and about the need for various ergonomic furniture and equipment, and the need for an ergonomic evaluation of her office.

175. Defendants knew about Plaintiff's reproductive disabilities beginning in March 2016, when Plaintiff informed Defendant BRENTE (Plaintiff's immediate supervisor at the time), Cristina Sarabia, and Wanda Hudson that she was having an emergency hysterectomy. Plaintiff told Defendant BRENTE and Wanda Hudson about the exhaustion and need for 16 hours of sleep per night, and about the memory loss, difficulty concentrating, and inability to think or reason at her normal level (starting in about May 2016).

Plaintiff discussed her reproductive disabilities and the accommodations that she required relating to her reproductive disabilities on a regular basis, from May 2016 to the present. For example, starting in about May 2016, Plaintiff repeatedly discussed with Defendants her needs for work restrictions, permission to work from home, a flexible work schedule, reduced hours, and extended (protected) leave.

176. Defendants also knew about Plaintiff's skin disabilities, consisting of rashes, itchiness, and skin which was constantly sweaty (causing delayed healing of her hysterectomy incision), beginning in about May 2016, when she told Defendant BRENTE and Wanda Hudson about these medical issues. Plaintiff also discussed her skin disabilities with other employees of Defendants (starting in May 2016 and continuing to the present).

177. Defendants also knew about Plaintiff's immunological disability, consisting of an unspecified auto-immune disorder, beginning in about May 2016, when she told Defendant BRENTE and Wanda Hudson about this disability. Plaintiff also discussed her immunological disability with David Trujillo (starting in about July 2017 and continuing to the present), and with other employees of Defendants (starting in May 2016 and continuing to the present).

178. Defendants also knew about Plaintiff's endocrine disability, consisting of severe hypothyroidism and extreme hormone imbalances, beginning in about May 2016, when she told Defendant BRENTE and Wanda Hudson about this disability. Plaintiff also discussed her endocrine disability with David Trujillo (starting in about July 2017 and continuing to the present), and with other employees of Defendants (starting in May 2016 and continuing to the present). Plaintiff told Defendants that, at least in part because of her endocrine disability, she was needing to sleep up to 16 hours per night, and requested an accommodation for this in the form of permission to work from home, a reduced work schedule, a flexible work schedule, and extended (protected) leave.

179. When Plaintiff contracted typhus, which may have been related to her auto-immune disorder, EMPLOYER Defendants refused to reasonably accommodate Plaintiff's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium (neurological disabilities) which were caused by typhus. EMPLOYER Defendants have a legal duty to reasonably accommodate Plaintiff's commute-related limitations.

180. Plaintiff has repeatedly requested that the building where she works (City Hall East) be

fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East.

181. On January 29, 2019, Plaintiff was interviewed by Joel Grover of NBC 4 local news regarding her typhus. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover for comment.

182. The next day, on January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for her speaking to the media about contracting typhus at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

183. Also on February 1, 2019, EMPLOYER Defendants were served with the Complaint in this matter.

184. On February 6, 2019 (only three workdays after EMPLOYER Defendants were served with the Complaint in this matter, and within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her new work location at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily

partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

185. On February 7, 2019, Plaintiff appeared on the Channel 5 11:00 a.m. News, on the Channel 11 News at 1:00 p.m., and on John and Ken (on KFI AM 640 Radio and Podcast) at 3:00 p.m..

186. Also on February 7, 2019, Plaintiff was featured in an article in the *Los Angeles Times* titled " L.A. City Hall, overrun with rats, might remove all carpets amid typhus fears." This article discusses the rat infestation at City Hall and a proposition to remove all of the carpet from City Hall and the adjoining buildings. Plaintiff was featured in the article and was quoted as saying:

> I am actually terrified of entering the building again until they do something" and "that carpet is years old – and, more than likely, it has fleas and flea eggs in it" and "I would really like to see the building fumigated for both rats and fleas . . . I hope they don't wait.

187. Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the typhus epidemic and about the fact that she contracted typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

188. The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted)

assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch. Plaintiff replied via email, stating:

> We are preparing a response to your sudden and unexpected change demotion in my job to an entry level assignment I have not done in over 20 years. The airport courthouse is not accessed by train and will require a two mile walk and three separate bus rides. It is more complicated than City Hall East. Further, as you are aware since you have had the document for two weeks, I have a doctor's appointment at US HealthWorks in downtown at 1:30 in the afternoon. Is someone driving me there and back? You should know the appointments may take up to 4 hours. I will have to leave the airport shortly after arrival in order to make my appointment if you are expecting me to take public transportation.
>
> I am wondering if this demotion is until OSHA clears the building and I am able to enter without putting my life at risk.

189. Plaintiff's most recent medical leave expired March 7, 2019. She has been unable to see Dr. Sokolov again to either have her leave extended or be cleared to return to work, because her workers' compensation claim had been closed, either by Defendant CITY or by its workers' compensation administrator, Elite Claims.

190. At all relevant times herein, Plaintiff was qualified for and/or competently performed the positions she held with Defendants.

191. At all relevant times herein, Plaintiff was able to perform the essential functions of her job with reasonable accommodations. Unfortunately, the necessary reasonable accommodations were not provided by Defendants, despite Plaintiff repeatedly requesting them and submitting certifications and notes from her medical providers.

192. As a result of and substantially motivated by Plaintiff's actual disabilities, need for accommodations, and need for protected leave, Defendants and each of them subjected Plaintiff to discriminatory treatment and/or adverse employment actions as described herein.

193. Defendants engaged in unlawful employment practices in violation of the FEHA by discriminating against Plaintiff based on her physical disabilities, and these practices were constant and continuous. The discrimination started in Spring 2011, after Plaintiff repeatedly told Jonathan Galatzan about her lumbar spine disability and repeatedly asked that he assist with getting her an ergonomic chair and ergonomic evaluation of her office (which was in San Pedro). Rather than attempt to assist Plaintiff, Jonathan Galatzan changed Plaintiff's job assignment so that she was required to work part of the time from

a storage closet in downtown Los Angeles, doing work which was not originally part of her job and which she did not want to do. The discrimination continued and included, but was not limited to, the following:

a) Donald Cocek changing Plaintiff's job duties further, so that she had to work full-time doing work which was not supposed to be any part of her job, and to do so from a storage closet in downtown Los Angeles. There was no legitimate business reason for doing this. (This occurred in approximately November 2011.)

b) Donald Cocek failing to assign cases to other attorneys while Plaintiff was on extended medical leave in order to set Plaintiff up for discipline. (This occurred from approximately October 2012 to approximately January 29, 2013.)

c) Donald Cocek giving Plaintiff a Notice to Correct Deficiencies for failing to file cases which he had assigned to her **after** she went out on approved leave, and the deadlines for which had passed **before** she returned from leave. (This occurred in January 2013.)

d) Defendants failing to recommend Plaintiff for promotion or to promote Plaintiff when she was transferred to the Police Litigation Unit, even though this position involves longer hours than Plaintiff's previous position, and a significant amount of responsibility. (This occurred in June 2013.)

e) Defendants failing and refusing to accommodate Plaintiff's repeated requests for reasonable accommodations. (This occurred from June 2013 to the present.)

f) Defendant BRENTE failing to recommend Plaintiff for promotion, and EMPLOYER Defendants failing to promote Plaintiff on her anniversary date in March 2014.

g) Defendant BRENTE failing to recommend Plaintiff for promotion, and EMPLOYER Defendants failing to promote Plaintiff on her anniversary date in March 2015.

h) Defendant BRENTE failing to order, purchase, and/or install Plaintiff's ergonomic furniture and equipment (even though the ergonomic equipment of a male attorney in the same department was quickly purchased and installed). (This occurred from February 16, 2016 to the present.)

i) Defendant BRENTE failing to recommend Plaintiff for promotion, and EMPLOYER Defendants failing to promote Plaintiff on her anniversary date in March 2016.

j) Defendant BRENTE changing the official description of Plaintiff's essential job functions to make

it appear she could not perform the essential job functions for her position. (This occurred on June 12, 2017.)

k) Defendant BRENTE failing to recommend Plaintiff for promotion, and EMPLOYER Defendants failing to promote Plaintiff on her anniversary date in March 2017.

l) Defendant BRENTE criticizing Plaintiff for missing work and not working from 8:30 a.m. to 5:00 p.m., even though Plaintiff had told Defendant BRENTE about her medical issues in detail (which legally she was not required to do), and had explained to him the reasons why she had to take time off work for so many medical appointments, and had to sleep 12 to 16 hours per night, making it very difficult to arrive at work by 8:30 a.m. and to work for eight hours per day. There was not even any business reason which required Plaintiff to be physically at the office from 8:30 a.m. to 5:00 p.m. (This occurred on June 21, 2017.)

m) Defendant BRENTE repeatedly failing and refusing to assign another attorney to cover Plaintiff's cases while she was on leave for her disabilities, causing some filing deadlines to be missed on cases which were still assigned to Plaintiff. (This occurred from summer 2017 through February 12, 2018, and again from February 28, 2018 through October 16, 2018.)

n) Defendants not only failing to recommend for promotion or promote Plaintiff, but even withholding/denying Plaintiff's anniversary date step. (This occurred in March 2018.)

o) Defendant BRENTE issuing a formal Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties Plaintiff was having at work due to her physical disabilities, despite the fact that: i) Plaintiff had been on FMLA/CFRA leave from approximately March 12, 2010 through June 12, 2010 for her spinal surgery, ii) Plaintiff had been on FMLA/CFRA leave from approximately March 11, 2016 through June 5, 2016 for her endometriosis and fibroid uterus, and then for the emergency hysterectomy and the complications relating to that surgery, iii) Plaintiff had communicated constantly with Defendant BRENTE regarding her various physical disabilities and serious health conditions, and had answered many more questions regarding the details of her serious health conditions than she was legally required to, iv) Plaintiff had been attempting to get ergonomic furniture which would at least lessen her back pain **since early 2011,** v) Defendant BRENTE was the person responsible for having the ergonomic items installed but the items had

been sitting in boxes in Plaintiff's office since July 2016, vi) Plaintiff had submitted a formal request for reasonable accommodations to Human Resources and met with Human Resources about this, and vii) Plaintiff had filed a workers' compensation claim on August 14, 2017. (This Notice to Correct Deficiencies was issued on November 7, 2017.)

p) Plaintiff being summoned back to the office to receive the November 7, 2017 Notice to Correct Deficiencies, **while** Plaintiff was at the doctor to obtain a note which Vivienne Swanigan had said was required. The meeting was attended by Plaintiff, Defendant BRENTE, union representative Oscar Winslow, and a woman from Personnel (name unknown). During this meeting, Plaintiff described in detail all the health issues which were making it difficult for her to work regular hours related to her severe menopause (hormone imbalances), her hypothyroidism, and her back injury. She explained that much of the time when she was late to work, it was because she required so much sleep because of the menopause symptoms (extreme hormone imbalances), combined with her hypothyroidism. She again requested reasonable accommodations for all these physical disabilities, such as permission to work from home, a flexible work schedule, reduced hours, extended (protected) leave, and ergonomic improvements to her office equipment and furnishings. Rather than discuss what reasonable accommodations might be possible, Defendant BRENTE said to Plaintiff, right in front of Oscar Winslow and the woman from Personnel, "We all know the workers' comp claim is bullshit." This was an accusation of Plaintiff committing an illegal act (workers' compensation fraud). (This occurred on November 8, 2017.)[15]

q) Defendant BRENTE admonishing Plaintiff for not keeping up with her work while she was in excruciating pain and attempting to work from home. (This occurred on March 8, 2018.)

r) Defendants failing and/or refusing, year after year as discussed above, to promote Plaintiff, even while non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted. (This began almost immediately after Defendants learned of Plaintiff's musculoskeletal disability and has continued to the present.)

s) Defendant BRENTE failing and/or refusing to recommend Plaintiff for promotion in 2015, 2016,

[15]Plaintiff actually prevailed in that workers' compensation claim, so apparently it was not "bullshit."

2017, or 2018, even though he recommended that non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, be promoted.

t) Defendants telling Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment, and giving her no indication regarding when the equipment was expected to arrive. (This occurred on June 8, 2018.)

u) Defendants terminating Plaintiff's health benefits (without notice) while she had still not received any response to her April 25, 2018 request to take a FMLA/CFRA leave of absence, and the ergonomic equipment and furnishings had still not been installed in her office, which would have allowed her to return to work. (This occurred on June 9, 2018.)

v) Defendants threatening to terminate Plaintiff only three hours after she advised them of work restrictions imposed by the medical provider U.S. HealthWorks, which is the occupational medicine provider designated by EMPLOYER Defendants. (This occurred on December 21, 2018.)

w) Defendants stating that Plaintiff was absent without leave, even though she had submitted proper documents from U.S. HealthWorks indicating she was temporarily partially disabled and unable to drive. (This happened on December 31, 2018.)

x) Defendants failing and refusing to pay Plaintiff for her 2019 holiday and sick leave and changing her health insurance from Anthem to Kaiser Permanente HMO without permission or notice. (Plaintiff learned of this on December 9, 2018.)

y) Defendants denying Defendant CITY had a duty to reasonably accommodate Plaintiff's disability of being unable to drive due to her severe vertigo.

z) Defendants denying that "driving" was an essential function of Plaintiff job, even though driving requirements to other counties were clearly described in the June 12, 2017 "Essential Functions of Deputy City Attorneys in Police Litigation Unit" document drafted by Defendant BRENTE.

aa) Defendants demoting Plaintiff to a position at Pacific Office, Criminal Branch, where she would be doing misdemeanor arraignments at the LAX courthouse. Defendants claimed this was an accommodation even though it did nothing to accommodate Plaintiff's driving restriction or the ongoing problems with her workstation which was supposed to have designed to accommodate her

lumbar spine disability. (This happened on February 6, 2019.) Then, in what can only be seen as an attempt to further demean, irritate, and upset Plaintiff, on February 8, EMPLOYER Defendants sent Plaintiff a letter telling her where she was to park when she arrived at her new assignment at Pacific Office, Criminal Branch, even though they knew the City-designated doctors are stated Plaintiff was not to drive.

bb) EMPLOYER Defendants continuing to refer to Plaintiff's medical leave (first for her lumbar spine disability and now for the typhus – injuries which both occurred at work and for which Plaintiff filed workers' compensation claims) as "personal medical leave of absence." These are not personal leaves, they are disability leaves for injuries which were caused by EMPLOYER Defendants.

cc) EMPLOYER Defendants failing to fumigate City Hall East so that it is safe for its employees and the members of the public who visit the building.

dd) Defendants refusing to participate in a timely, good-faith, interactive process regarding Plaintiff's requests for reasonable accommodations, even though Plaintiff repeatedly requested reasonable accommodations.

ee) Defendants failing and refusing to conduct a timely, proper, and/or complete investigation of the disability discrimination to which Plaintiff was subjected and about which Plaintiff complained to Defendant BRENTE, David Trujillo, and numerous other employees of EMPLOYER Defendants.

194. At all relevant times herein, Defendants failed to provide reasonable accommodations to Plaintiff so that she could perform her job without being in agonizing pain, or so exhausted she could not concentrate, think, or reason at her normal level, even though Plaintiff repeatedly requested numerous reasonable accommodations. (To say Defendants "failed" to provide reasonable accommodations is an understatement. Defendants flat-out refused to provide reasonable accommodations, and repeatedly aggravated and manipulated Plaintiff by making her obtain additional prescriptions from doctors and participate in multiple ergonomic evaluations, then did things like ship some ergonomic items, but never bother to take them out of the boxes and set them up.)

195. From November 2018 through the present, Defendants failed to provide reasonable accommodations for Plaintiff's vertigo, so she could either work from home, or get to the office downtown.

196. The acts and conduct of Defendants and their agents, and each of them, were in violation

of the FEHA. The FEHA imposes certain duties upon Defendants concerning discrimination against persons such as Plaintiff, on the basis of disabilities. The FEHA was intended to prevent the type of injury and damage set forth herein.

197. Defendants and their agents also violated the FEHA by failing to take all reasonable steps necessary to prevent such discrimination from occurring, in violation of Government Code section 12940(k). During the entire relevant period, Defendants created and fostered an environment where unlawful discrimination was condoned, encouraged, tolerated, sanctioned, and ratified. During the entire relevant period, Defendants failed to provide any and/or adequate training, education, and/or information to their personnel, and most particularly to management and supervisory personnel with regard to policies and procedures regarding avoiding unlawful discrimination. Defendants failed to take reasonable steps to prevent unlawful discrimination from being inflicted on Plaintiff, and this resulted in Plaintiff being discriminated against on a constant and continuous basis.

198. As a direct and legal result of Defendants' unlawful actions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

199. As a direct and legal result of Defendants' unlawful actions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

200. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

201. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

202. As a direct result of Defendants' discriminatory acts, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

SECOND CAUSE OF ACTION

FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(n)]

[Against EMPLOYER Defendants and DOE Defendants]

203. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

204. At all relevant times herein, despite having abundant notice of Plaintiff's numerous disabilities as alleged above, Defendants knowingly failed and/or refused to engage in a timely, good-faith, interactive process with Plaintiff to determine whether it would be possible to implement effective reasonable accommodations as required by Government Code section 12940(n).

205. Government Code section 12940(n) generally provides that it is an unlawful employment practice for an employer or other entity covered by the FEHA to fail to engage in a timely, good-faith, interactive process with the employee to determine effective reasonable accommodations, if any, for an employee with a known physical or mental disability or known health condition.

206. At all relevant times herein, Plaintiff was a disabled person within the meaning of Government Code sections 12926(m) and 12926.1(b) because she was a person with numerous actual, disabling or potentially disabling in the future, physical disabilities.

207. Plaintiff's physical disabilities include, but are not limited to:

a) A severe musculoskeletal disability of the lumbar spine, which has required surgery, steroid

injections, selective root blocks, and numerous other treatments;

b) Reproductive disabilities including an emergency hysterectomy, an abrupt menopause, and numerous complications of menopause including, but not limited to, needing to sleep up to 16 hours per night, memory loss, difficulty concentrating, and inability to think or reason at her normal level;

c) A skin disability consisting of rashes, itchiness, and skin which was constantly sweaty, causing it to be difficult for her hysterectomy incision to heal, and causing her to develop a postoperative wound infection;

d) An immunological disability consisting of an unspecified auto-immune disorder, which contributes to Plaintiff's need to sleep up to 16 hours per night;

e) An endocrine disability consisting of severe hypothyroidism and extreme hormone imbalances, which contributes to Plaintiff's need to sleep up to 16 hours per night; and

f) A neurological disability consisting of extreme vertigo, dizziness, and disequilibrium which were caused by typhus, and which prevent Plaintiff from being able to drive.

208. At all relevant times herein, Defendants knew about Plaintiff's physical limitations. Pursuant to California Code of Regulations section 11069(b)(1) and (2), an employer or other covered entity shall initiate a timely, good-faith, interactive process when the employer or other covered entity otherwise becomes aware of the need for an accommodation through the employee, a third party, or by observation.

209. At all relevant times herein, Defendants were aware of and/or had notice of Plaintiff's injuries and/or disabilities and/or need for accommodations pursuant to California Code of Regulations section 11069(b)(1) and (2). Defendants acquired notice through the following, among others:

a) During the fall of 2010, Plaintiff told Jonathan Galatzan about the lower back pain she was having, especially when sitting in her desk chair at work. (Plaintiff was working from an office in the San Pedro City Hall at this time, so at least she did not have to spend hours driving.)

b) In early 2011, Plaintiff submitted a prescription for an ergonomic chair and an ergonomic evaluation of her office to the Human Resources Department.

c) During the spring, summer, and fall of 2011, Plaintiff told Jonathan Galatzan that requiring her to travel to and from downtown Los Angeles, and to work part of the time in a completely non-

ergonomic storage office, was exacerbating her lumbar spine disability, due both to the travel and to the completely non-ergonomic storage closet office.

d) In November 2011, Plaintiff told Donald Cocek about her back injury, about her pain issues, and about her request for an ergonomic evaluation and an ergonomic chair, which she now needed in two offices (San Pedro and downtown). Plaintiff asked whether there was anything Donald Cocek could do to assist in obtaining these items.

e) During late 2011 and throughout 2012, Plaintiff repeatedly attempted to discuss with Donald Cocek the problems with her being forced to work (now full-time) in the downtown non-ergonomic supply closet office.

f) During late 2011 and throughout 2012, Plaintiff contacted the Human Resources Department and requested that the ergonomic evaluation (for which she had submitted a prescription in early 2011) be conducted without further delay.

g) In June 2013, immediately upon being transferred to the Police Litigation Unit, Plaintiff informed Defendant BRENTE of her lumbar spine disability, and of the accommodations she needed for that disability.

h) From 2013 through 2015, Plaintiff complained repeatedly to Defendants (specifically Defendant BRENTE) about the need for an ergonomic chair and for an ergonomic evaluation of her office. Plaintiff also requested permission to work from home part-time as an accommodation for her lumbar spine disability, since the commute from her home in San Pedro to downtown Los Angeles exacerbated her lumbar spine disability.

i) On January 6, 2016, having received no response from Defendant BRENTE to her years of requests for accommodations for her lumbar spine disability, Plaintiff sent an email to Wanda Hudson in the Human Resources Department, stating that she had two prescriptions – one for an ergonomic chair and another for an ergonomic analysis of her office. Plaintiff copied Defendant BRENTE on the email to Wanda Hudson and, on January 7, 2016, forwarded the email to Cristina Sarabia, Human Resources Director.

j) On or about January 8, 2016, Plaintiff submitted her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Defendant CITY's

Personnel Department, as directed by Cristina Sarabia.

k) On February 1, 2016, an ergonomic evaluation of Plaintiff's work station was conducted, and on February 16, 2016, Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, issued a report in which she listed the equipment which Plaintiff required. This included a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. As Plaintiff's department supervisor, Defendant BRENTE was responsible for addressing and carrying out the recommendations in this report, which included ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to Plaintiff's workstation. Many months passed, however, and Defendant BRENTE did none of these things.

l) On March 11, 2016, Plaintiff requested FMLA/CFRA leave for her reproductive disability.

m) On April 26, 2016, Plaintiff's physician completed a medical certification in which he stated that (because of Plaintiff's hysterectomy and related issues) Plaintiff would not be able to return to work until May 14, 2016, but that she was able to return to "limited work from home" as of April 18, 2016.

n) Plaintiff later requested, and was granted, FMLA/CFRA leave through June 5, 2016, for her reproductive disability, auto-immune disability, endocrine disability, and skin disability.

o) Plaintiff later requested, and was approved, to work from home three hours per day, from April 18 through approximately May 13, 2016, and then six hours per day from approximately May 16 through June 3, 2016.

p) In July 2016, Plaintiff emailed Wanda Hudson in the Human Resources Department about the fact that five months had passed since she had most recently requested the ergonomic chair and an ergonomic analysis of her office, and she had still not received any of her ergonomic furnishings or equipment. About a week later, several boxes (presumably of ergonomic equipment and furniture) arrived in Plaintiff's office, but no one ever arrived to set the items up. According to the February 16, 2016 report and the February 16, 2016 email to Defendant BRENTE, Wanda Hudson, and Plaintiff, the requesting department supervisor (Defendant BRENTE) should have made arrangements for the equipment to be installed, but he never did so.

q) From July 2016 thorough February 2017, Plaintiff repeatedly complained to Defendant BRENTE

that her ergonomic items had not been installed, but were instead in boxes in her office.

r) Because of her various disabilities, Plaintiff requested, and was granted, intermittent sick leave for her disabilities from October 2016 through January 2017.

s) On or about January 17, 2017, Plaintiff gave a prescription for a stand-up desk to Wanda Hudson in the Human Resources Department and to someone in the Occupational Safety and Health Division of the City Personnel Department.

t) Because of her various disabilities, Plaintiff requested, and was granted, leave for 36 hours in March 2017, 46 hours in April 2017, and 99 hours in May 2017.

u) On or about June 21, 2017, Plaintiff submitted a formal request for reasonable accommodations to the Human Resources Department. In this request, Plaintiff requested reasonable accommodations related to her extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, which were requiring her to sleep 12 to 16 hours per night, preventing her from getting to work at 8:30 a.m. on some days, and preventing her from working eight hours per day on some days.

v) On July 11, 2017, Plaintiff met with David Trujillo and Margaret Shikibu, both of the Human Resources Department, regarding her request for reasonable accommodations. The Human Resources Department granted Plaintiff a so-called temporary accommodation by changing her schedule to 10:00 a.m. to 6:00 p.m. This was not at all sufficient, as discussed above.

w) Because of her various disabilities, Plaintiff requested, and was granted, leave from July 23 through August 5, 2017 since (receiving very little assistance from Defendants) that was the only way she could accommodate her various disabilities.

x) In or about October 2017, Plaintiff had a discussion with Defendant BRENTE regarding the fact that Plaintiff's ergonomic equipment and furnishings had still not been provided (or had been provided and were still in boxes).

y) Because of her various disabilities, Plaintiff requested, and was granted, leave for much of October 2017.

z) On November 8, 2017, in a meeting with Defendant BRENTE, union representative Oscar Winslow, and a woman (name unknown) from the Personnel or Human Resources Department,

Plaintiff described in detail all the health issues which were making it difficult for her to work regular hours, relating to her various physical disabilities. She explained that much of the time when she was late to work, it was because she required so much sleep because of the menopause (hormone imbalances) and hypothyroidism symptoms. She explained that other times it was because her back pain was so severe, she had to be up for a while and take pain medication before she could begin her commute to work. She again requested reasonable accommodations for her physical disabilities.

aa) Because of her various disabilities, Plaintiff requested, and was granted, sick leave from November 27, 2017 through January 20, 2018, then intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018.

bb) On February 12, 2018, Plaintiff reported to work and took with her three prescriptions (which were all dated February 7, 2018, and which were for an ergonomic keyboard drawer, an ergonomic chair, and a stand-up desk) from Dr. Proano and a note from Dr. Proano, indicating Plaintiff was able to return to work on February 12, 2018, but only to "light" work duties, and only with the following restrictions: "no bending, stooping, lifting, sit no more than 1 hour, standing no more than 1 hour." She submitted these four documents to the Human Resources Department on February 12, 2018.

cc) Also during February 2018, Plaintiff complained to David Trujillo that there were still boxes of ergonomic equipment in her office which had never been opened and installed. She told David Trujillo that her back would start aching within an hour of her sitting at her desk, and she was afraid sitting in that chair would seriously exacerbate her spinal disability.

dd) On February 14, 2018, Plaintiff reminded the Human Resources Department that she had originally started requesting an ergonomic evaluation process in early 2011, the ergonomic evaluation had finally been performed on February 1, 2016, and, although the boxed ergonomic items were finally delivered to her office in July 2016, none of the equipment had been set up.

ee) Also on February 14, 2018, Plaintiff met with David Trujillo to discuss accommodation of the work restrictions which were listed in the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). Defendants never responded to Plaintiff regarding what could be done to arrange for the

requested accommodations, and there were no efforts by Defendants to engage in a timely, good-faith interactive process with Plaintiff.

ff) Beginning February 27, 2018, Plaintiff was unable to work because of her lumbar spine disability. She told both the Human Resources Department and Defendant BRENTE she could not work because her ergonomic furniture and equipment had still not been installed, and that working in her work station in its then-current condition was greatly exacerbating her lumbar spine disability. Plaintiff requested to work from home as a reasonable accommodation, but this request was later denied. Defendants made no effort to engage in a timely, good-faith interactive process regarding Plaintiff's need for reasonable accommodations.

gg) After Plaintiff was denied the ability to work from home, she was forced to request FMLA/CFRA leave, which was eventually granted retroactively, with a March 8, 2018 start date. The leave was through April 9, 2018.

hh) Plaintiff returned to work on April 13, 2018, but on April 25, 2018, was in so much pain from her lumbar spine disability that she requested to take a medical leave of absence as a reasonable accommodation, but months went by without her receiving a response. Defendants made no effort to engage in a timely, good-faith, interactive process concerning Plaintiff's requested reasonable accommodation.

ii) On June 8, 2018, Plaintiff had another conversation with David Trujillo regarding the ergonomic equipment and furnishings. David Trujillo told Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment. David Trujillo gave no indication regarding when the equipment was expected to arrive.

jj) On October 16, 2018, Plaintiff's physician wrote a note stating that she could return to work with the following restrictions/accommodations, "no bending, stooping, standing for more than 1 hour. Stand up desk and ergonomic chair [required]." This obviously meant Plaintiff would require reasonable accommodations. Defendants made no effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

kk) Also on October 16, 2018, Plaintiff submitted a complaint to EMPLOYER Defendants' Office of

Discrimination Complaint Resolution. In that complaint, Plaintiff alleged discrimination based on disability (among other things), and further alleged she had been subjected to a variety of harassing and discriminatory treatment, including several adverse employment actions.

ll) Plaintiff returned to work on October 17, 2018, only to find that the electric high-adjustable desk and electric high-adjustable chair which had been ordered had still not arrived. Plaintiff told both David Trujillo and Defendant BRENTE about this, but Defendants still made no effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

mm) Plaintiff worked at least sporadically from October 17, 2018 through October 31, 2018, during which she repeatedly told David Trujillo and Defendant BRENTE that she was in excruciating pain from her lumbar spine disability because of the lack of ergonomic furniture, as well as because of her need to sleep 10 hours per day due to her immunological and/or endocrine disabilities. Still, Defendants made no effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

nn) In November and December 2018 and January 2019, Plaintiff submitted reports from U.S. HealthWorks to EMPLOYER Defendants and Defendant BRENTE regarding her neurological disability consisting of vertigo resulting from typhus. (U.S. HealthWorks designated Plaintiff temporarily partially disabled and unable to drive or operate heavy machinery from December 20, 2018 through January 21, 2019.) The result of Plaintiff submitting these reports was for David Trujillo (on December 21, 2018) and then Vivienne Swanigan (on December 31, 2018) sending letters stating that Plaintiff was "absent without leave," and threatening loss of Plaintiff's job, and then for EMPLOYER Defendants to terminate Plaintiff's health insurance.

oo) On January 17, 2019, Vivienne Swanigan sent a letter stating that there was "no staff, no equipment, no authorization, and no funds" and "no plan" to fumigate City Hall East. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 17, 2019 letter. Defendants made no effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

pp) It was (and is) the position of Plaintiff and her attorney that EMPLOYER Defendants have a legal

duty to reasonably accommodate Plaintiff's commute-related limitations. Plaintiff repeatedly requested of David Trujillo, and Plaintiff's attorney repeatedly requested of Vivienne Swanigan, that Plaintiff's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium which were caused by typhus be reasonably accommodated. One such communication was in a January 22, 2019 letter from Plaintiff's attorney to Vivienne Swanigan. Vivienne Swanigan's response, in a letter dated January 25, 2019, was that she would not be communicating with Plaintiff's attorney any further. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 25, 2019 letter. Again, Defendants made no effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

qq) The next day, on January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Rather that make an effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations, Defendants made untrue statements about Plaintiff's essential job functions.

rr) On February 6, 2019, Defendants demoted Plaintiff to a position at Pacific Office, Criminal Branch, where she would handle misdemeanor arraignments at the LAX courthouse. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Although Defendants claimed this was an accommodation even though it did absolutely nothing to accommodate Plaintiff's driving restriction or the ongoing problems with her workstation which

was supposed to have designed to accommodate her lumbar spine disability. (This happened on February 6, 2019.) Then, in what can only be seen as an attempt to further demean, irritate, and upset Plaintiff, on February 8, EMPLOYER Defendants sent Plaintiff a letter telling her where she was to p**ark** when she arrived at her new assignment at Pacific Office, Criminal Branch, even though they knew the City-designated doctors are stated Plaintiff was not able to drive. This was clearly not an effort by Defendants to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

ss) From November 2018 through the present, EMPLOYER Defendants refused to engage in a timely, good-faith, interactive process regarding Plaintiff's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium (neurological disabilities which were caused by typhus). Plaintiff has proposed numerous possible accommodations, such as EMPLOYER Defendants reimbursing her for taking an Uber or taxi, EMPLOYER Defendants allowing Plaintiff to work from home, EMPLOYER Defendants allowing Plaintiff to work in a City office in San Pedro (where Plaintiff lives). EMPLOYER Defendants have refused to discuss any of these proposals, even when the law which requires EMPLOYER Defendants to accommodate Plaintiff's driving restriction was pointed out to them (specifically, to Vivienne Swanigan).

tt) Plaintiff repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East. Defendants have also failed to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations (which is why Plaintiff felt forced to begin talking to the media).

uu) Additionally, Defendants have still failed to provide the accommodations Plaintiff has been requesting (and her doctors have been ordering) for years. Defendants refuse to provide Plaintiff with a electric high-adjustable desk and electric high-adjustable chair. Being required to bend over and manually raise and lower a desk a chair several times per day is counterproductive to

accommodating Plaintiff's lumbar spine disability. (To say Defendants "failed" to provide reasonable accommodations is an understatement. Defendants flat-out refused to provide reasonable accommodations, and repeatedly aggravated and manipulated Plaintiff by making her obtain additional prescriptions from doctors and participate in multiple ergonomic evaluations, then did things like ship some ergonomic items, but never bother to take them out of the boxes and set them up.) Plaintiff is attempting to continue an interactive dialogue with Defendants regarding these much needed accommodations, but has not be successful in accomplishing anything.

210. Defendants were well aware of Plaintiff's physical disabilities and of Plaintiff's need for reasonable accommodations.

211. At all relevant times herein, Plaintiff was willing to participate in an interactive process to determine whether reasonable accommodations could be made, and in fact repeatedly requested reasonable accommodations, including providing certifications and notes from her medical providers regarding work restrictions and accommodations which were needed.

212. Despite their duties to do so, Defendants failed to timely initiate and thereafter participate in a timely, good-faith, interactive process with Plaintiff to determine whether reasonable accommodations could be made.[16]

213. Defendants' failure to engage in a timely, good-faith, interactive process **over a period of seven years** was a direct cause and a substantial factor in causing Plaintiff's harm.

214. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been,

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[16]The only accommodations which were provided consisted of allowing Plaintiff to take medical leave (causing her to completely deplete her accrued sick leave and vacation), and providing the so-called accommodation on July 11, 2017, involving changing Plaintiff's work schedule to 10:00 a.m. to 6:00 p.m. Only a couple of the smaller prescribed ergonomic items were un-boxed and set up in Plaintiff's office. The electric high-adjustable desk and electric high-adjustable chair were supposedly ordered but, to Plaintiff's knowledge, never arrived. No accommodations were made by Plaintiff's vertigo which was caused by typhus. Instead, Plaintiff was demoted to a position which presented the same commuting problems as her original position.

because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

215. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

216. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

217. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

218. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

THIRD CAUSE OF ACTION

FAILURE TO ACCOMMODATE PHYSICAL DISABILITIES

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(m)]

[Against EMPLOYER Defendants and DOE Defendants]

219. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

220. Throughout Plaintiff's employment, Defendants failed to reasonably accommodate

Plaintiff's injuries and/or disabilities as required by Government Code section 12940(m).

221. Government Code section 12940(m) provides that it is an unlawful employment practice for an employer or other entity covered under the FEHA to fail to make reasonable accommodations for the known physical disability of an applicant or employee.

222. At all relevant times herein, Plaintiff was an actual disabled or potentially disabled person within the meaning of Government Code sections 12926(m) and 12926.1(b), because she was a person with numerous actual, disabling or potentially disabling in the future, physical disabilities including, but not limited to:

a) A severe musculoskeletal disability of the lumbar spine, which has required surgery, steroid injections, selective root blocks, and numerous other treatments;

b) Reproductive disabilities including an emergency hysterectomy, an abrupt menopause, and numerous complications of menopause including, but not limited to, needing to sleep up to 16 hours per night, memory loss, difficulty concentrating, and inability to think or reason at her normal level;

c) A skin disability consisting of rashes, itchiness, and skin which was constantly sweaty, causing it to be difficult for her hysterectomy incision to heal, and causing her to develop a postoperative wound infection;

d) An immunological disability consisting of an unspecified auto-immune disorder, which contributes to Plaintiff's need to sleep up to 16 hours per night;

e) An endocrine disability consisting of severe hypothyroidism and extreme hormone imbalances, which contributes to Plaintiff's need to sleep up to 16 hours per night; and

f) A neurological disability consisting of extreme vertigo, dizziness, and disequilibrium which were caused by typhus, and which prevent Plaintiff from being able to drive.

223. At all relevant times herein, Defendants had notice of Plaintiff's disabilities, need for accommodations, need for protected medical leave, and need for medical treatment. Defendants acquired notice through the following, among others:

a) During the fall of 2010, Plaintiff told Jonathan Galatzan about the lower back pain she was having, especially when sitting in her desk chair at work. (Plaintiff was working from an office in the San

Pedro City Hall at this time, so at least she did not have to spend hours driving.)

b) In early 2011, Plaintiff submitted a prescription for an ergonomic chair and an ergonomic evaluation of her office to the Human Resources Department.

c) During the spring, summer, and fall of 2011, Plaintiff told Jonathan Galatzan that requiring her to travel to and from downtown Los Angeles, and to work part of the time in a completely non-ergonomic storage office, was exacerbating her lumbar spine disability, due both to the travel and to the completely non-ergonomic storage closet office.

d) In November 2011, Plaintiff told Donald Cocek about her back injury, about her pain issues, and about her request for an ergonomic evaluation and an ergonomic chair, which she now needed in two offices (San Pedro and downtown). Plaintiff asked whether there was anything Donald Cocek could do to assist in obtaining these items.

e) During late 2011 and throughout 2012, Plaintiff repeatedly attempted to discuss with Donald Cocek the problems with her being forced to work (now full-time) in the downtown non-ergonomic supply closet office.

f) During late 2011 and throughout 2012, Plaintiff contacted the Human Resources Department and requested that the ergonomic evaluation (for which she had submitted a prescription in early 2011) be conducted without further delay.

g) In June 2013, immediately upon being transferred to the Police Litigation Unit, Plaintiff informed Defendant BRENTE of her lumbar spine disability, and of the accommodations she needed for that disability.

h) From 2013 through 2015, Plaintiff complained repeatedly to Defendants (specifically Defendant BRENTE) about the need for an ergonomic chair and for an ergonomic evaluation of her office. Plaintiff also requested permission to work from home part-time as an accommodation for her lumbar spine disability, since the commute from her home in San Pedro to downtown Los Angeles exacerbated her lumbar spine disability.

i) On January 6, 2016, having received no response from Defendant BRENTE to her years of requests for accommodations for her lumbar spine disability, Plaintiff sent an email to Wanda Hudson in the Human Resources Department, stating that she had two prescriptions – one for an ergonomic chair

and another for an ergonomic analysis of her office. Plaintiff copied Defendant BRENTE on the email to Wanda Hudson and, on January 7, 2016, forwarded the email to Cristina Sarabia, Human Resources Director.

j) On or about January 8, 2016, Plaintiff submitted her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Defendant CITY's Personnel Department, as directed by Cristina Sarabia.

k) On February 1, 2016, an ergonomic evaluation of Plaintiff's work station was conducted, and on February 16, 2016, Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, issued a report in which she listed the equipment which Plaintiff required. This included a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. As Plaintiff's department supervisor, Defendant BRENTE was responsible for addressing and carrying out the recommendations in this report, which included ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to Plaintiff's workstation. Many months passed, however, and Defendant BRENTE did none of these things.

l) On March 11, 2016, Plaintiff requested FMLA/CFRA leave for her reproductive disability.

m) On April 26, 2016, Plaintiff's physician completed a medical certification in which he stated that (because of Plaintiff's hysterectomy and related issues) Plaintiff would not be able to return to work until May 14, 2016, but that she was able to return to "limited work from home" as of April 18, 2016.

n) Plaintiff later requested, and was granted, FMLA/CFRA leave through June 5, 2016, for her reproductive disability, auto-immune disability, endocrine disability, and skin disability.

o) Plaintiff later requested, and was approved, to work from home three hours per day, from April 18 through approximately May 13, 2016, and then six hours per day from approximately May 16 through June 3, 2016.

p) In July 2016, Plaintiff emailed Wanda Hudson in the Human Resources Department about the fact that five months had passed since she had most recently requested the ergonomic chair and an ergonomic analysis of her office, and she had still not received any of her ergonomic furnishings or equipment. About a week later, several boxes (presumably of ergonomic equipment and

furniture) arrived in Plaintiff's office, but no one ever arrived to set the items up. According to the February 16, 2016 report and the February 16, 2016 email to Defendant BRENTE, Wanda Hudson, and Plaintiff, the requesting department supervisor (Defendant BRENTE) should have made arrangements for the equipment to be installed, but he never did so.

q) From July 2016 thorough February 2017, Plaintiff repeatedly complained to Defendant BRENTE that her ergonomic items had not been installed, but were instead in boxes in her office.

r) Because of her various disabilities, Plaintiff requested, and was granted, intermittent sick leave for her disabilities from October 2016 through January 2017.

s) On or about January 17, 2017, Plaintiff gave a prescription for a stand-up desk to Wanda Hudson in the Human Resources Department and to someone in the Occupational Safety and Health Division of the City Personnel Department.

t) Because of her various disabilities, Plaintiff requested, and was granted, leave for 36 hours in March 2017, 46 hours in April 2017, and 99 hours in May 2017.

u) On or about June 21, 2017, Plaintiff submitted a formal request for reasonable accommodations to the Human Resources Department. In this request, Plaintiff requested reasonable accommodations related to her extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, which were requiring her to sleep 12 to 16 hours per night, preventing her from getting to work at 8:30 a.m. on some days, and preventing her from working eight hours per day on some days.

v) On July 11, 2017, Plaintiff met with David Trujillo and Margaret Shikibu, both of the Human Resources Department, regarding her request for reasonable accommodations. The Human Resources Department granted Plaintiff a so-called temporary accommodation by changing her schedule to 10:00 a.m. to 6:00 p.m. This was not at all sufficient, as discussed above.

w) Because of her various disabilities, Plaintiff requested, and was granted, leave from July 23 through August 5, 2017 since (receiving very little assistance from Defendants) that was the only way she could accommodate her various disabilities.

x) In or about October 2017, Plaintiff had a discussion with Defendant BRENTE regarding the fact that Plaintiff's ergonomic equipment and furnishings had still not been provided (or had been

provided and were still in boxes).

y) Because of her various disabilities, Plaintiff requested, and was granted, leave for much of October 2017.

z) On November 8, 2017, in a meeting with Defendant BRENTE, union representative Oscar Winslow, and a woman (name unknown) from the Personnel or Human Resources Department, Plaintiff described in detail all the health issues which were making it difficult for her to work regular hours, relating to her various physical disabilities. She explained that much of the time when she was late to work, it was because she required so much sleep because of the menopause (extreme hormone imbalances) and hypothyroidism symptoms. She explained that other times it was because her back pain was so severe, she had to be up for a while and take pain medication before she could begin her commute to work. She again requested reasonable accommodations for her physical disabilities.

aa) Because of her various disabilities, Plaintiff requested, and was granted, sick leave from November 27, 2017 through January 20, 2018, then intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018.

bb) On February 12, 2018, Plaintiff reported to work and took with her three prescriptions (which were all dated February 7, 2018, and which were for an ergonomic keyboard drawer, an ergonomic chair, and a stand-up desk) from Dr. Proano and a note from Dr. Proano, indicating Plaintiff was able to return to work on February 12, 2018, but only to "light" work duties, and only with the following restrictions: "no bending, stooping, lifting, sit no more than 1 hour, standing no more than 1 hour." She submitted these four documents to the Human Resources Department on February 12, 2018.

cc) Also during February 2018, Plaintiff complained to David Trujillo that there were still boxes of ergonomic equipment in her office which had never been opened and installed. She told David Trujillo that her back would start aching within an hour of her sitting at her desk, and she was afraid sitting in that chair would seriously exacerbate her spinal disability.

dd) On February 14, 2018, Plaintiff reminded the Human Resources Department that she had originally started requesting an ergonomic evaluation process in early 2011, the ergonomic evaluation had finally been performed on February 1, 2016, and, although the boxed ergonomic items were finally

delivered to her office in July 2016, none of the equipment had been set up.

ee) Also on February 14, 2018, Plaintiff met with David Trujillo to discuss accommodation of the work restrictions which were listed in the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). Defendants never responded to Plaintiff regarding what could be done to arrange for the requested accommodations, and there were no efforts by Defendants to engage in a timely, good-faith, interactive process with Plaintiff.

ff) Beginning February 27, 2018, Plaintiff was unable to work because of her lumbar spine disability. She told both the Human Resources Department and Defendant BRENTE she could not work because her ergonomic furniture and equipment had still not been installed, and that working in her work station in its then-current condition was greatly exacerbating her lumbar spine disability. Plaintiff requested to work from home as a reasonable accommodation, but this request was later denied.

gg) After Plaintiff was denied the ability to work from home, she was forced to request FMLA/CFRA leave, which was eventually granted retroactively, with a March 8, 2018 start date. The leave was through April 9, 2018.

hh) Plaintiff returned to work on April 13, 2018, but on April 25, 2018, was in so much pain from her lumbar spine disability that she requested to take a medical leave of absence as a reasonable accommodation, but months went by without her receiving a response.

ii) On June 8, 2018, Plaintiff had another conversation with David Trujillo regarding the ergonomic equipment and furnishings. David Trujillo told Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment. David Trujillo gave no indication regarding when the equipment was expected to arrive.

jj) On October 16, 2018, Plaintiff's physician wrote a note stating that she could return to work with the following restrictions/accommodations, "no bending, stooping, standing for more than 1 hour. Stand up desk and ergonomic chair [required]." This obviously meant Plaintiff would require reasonable accommodations.

kk) Also on October 16, 2018, Plaintiff submitted a complaint to EMPLOYER Defendants' Office of Discrimination Complaint Resolution. In that complaint, Plaintiff alleged discrimination based on disability (among other things), and further alleged she had been subjected to a variety of harassing and discriminatory treatment, including several adverse employment actions.

ll) Plaintiff returned to work on October 17, 2018, only to find that the electric high-adjustable desk and electric high-adjustable chair which had been ordered had still not arrived. Plaintiff told both David Trujillo and Defendant BRENTE about this, but Defendants still made no effort to engage in a timely, good-faith, interactive process regarding Plaintiff's need for reasonable accommodations.

mm) Plaintiff worked at least sporadically from October 17, 2018 through October 31, 2018, during which she repeatedly told David Trujillo and Defendant BRENTE that she was in excruciating pain from her lumbar spine disability because of the lack of ergonomic furniture, as well as because of her need to sleep 10 hours per day due to her immunological and/or endocrine disabilities.

nn) In November and December 2018, Plaintiff submitted numerous reports from U.S. HealthWorks to EMPLOYER Defendants and Defendant BRENTE regarding her neurological disability consisting of vertigo resulting from typhus, and of her status as "temporarily partially disabled" because she was not allowed to drive. The result of Plaintiff submitting these reports was for David Trujillo and then Vivienne Swanigan to send letters stating that Plaintiff was "absent without leave," and threatening loss of Plaintiff's job.

oo) On December 1, 2018, Plaintiff filed a workers' compensation claim with Defendant CITY ATTORNEY'S OFFICE for in typhus disease. On her workers' compensation complaint form, Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician phoned me and informed me I tested positive for typhus.
>
> Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

pp) During January and February 2019, U.S. HealthWorks continued designating Plaintiff temporarily

partially disabled from December 20, 2018 through February 11, 2019.)

qq) Having obtained new accommodation from Defendants for her temporarily partial disability which has been caused by the typhus, and any indication that EMPLOYER Defendants had any plans to fumigate City Hall East, Plaintiff began speaking to the media. Plaintiff was interviewed by many television stations, radio stations, and newspapers as discussed in detail above.

rr) Plaintiff's first interview with media was her January 29, 2019 interview with Joel Grover of NBC 4 local news regarding her typhus. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover.

ss) The next day, on January 31, 2019, Defendants did the exact opposite thing from accommodating Plaintiff's disability. David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

224. Also on January 31, 2019, Plaintiff appeared on NBC Channel 4 News at 11:00 p.m. where she spoke about the typhus she had contracted while working at City Hall East.

225. As Plaintiff continued to speak out about the typhus investigation at City Hall for the next few weeks, and about the injuries she had endured, Defendants continued not only to fail to accommodate Plaintiff's disability, but also retaliated against Plaintiff.

226. On February 6, 2019 (only three workdays after EMPLOYER Defendants were served with the Complaint in this matter, and within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her new work location at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though

Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

227. Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the typhus epidemic and about the fact that she contracted typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

228. The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

229. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation

claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

230. To date, neither Plaintiff's conditions relating to the typhus, Plaintiff's lumbar spine disability, or any of Plaintiff's other physical disabilities have been reasonable accommodated by EMPLOYER Defendants. As a result of EMPLOYER Defendants' refusal to reasonably accommodate Plaintiff's physical disabilities, Plaintiff as been forced to use accrued paid vacation, accrued paid sick leave, and even to go without pay.

231. At all relevant times herein, Plaintiff was able to perform the essential job duties with reasonable accommodations for her physical disabilities yet Defendants refused to accommodate Plaintiff by:

a) Refusing to allow her to work from home (even though many other deputy city attorneys in the Police Litigation Unit do so).

b) Refused to allow her to work from an office in San Pedro.

c) Refused to providing ergonomic equipment and furnishings **which her doctor ordered in 2011**.

d) Refused to allow Plaintiff a flexible schedule, even though virtually every other deputy city attorney in the Police Litigation Unit had a flexible schedule.

e) Refused Plaintiff "accommodations" which were simply the usual job benefits for other deputy city attorneys in the Police Litigation Unit.

232. Plaintiff was harmed as a result of Defendants' failure to provide reasonable accommodations.

233. Defendants' failure to provide reasonable accommodations was a direct cause and a substantial factor in causing Plaintiff's harm.

234. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid

leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

235. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

236. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

237. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

238. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

FOURTH CAUSE OF ACTION

HARASSMENT ON THE BASIS OF PHYSICAL DISABILITIES IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(j)]

[Against All Defendants]

239. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

240. At all relevant times for purposes of this Complaint, the FEHA was in full force and effect and binding on Defendants. The FEHA provides that it is an unlawful employment practice:

> (j) (1) For an employer . . . or any other person, because of . . . physical disability . . ., to harass an employee . . . . Harassment of an employee . . . by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. . . . An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.
>
> (2) The provisions of this subdivision are Declaratory of existing law, except for the new duties imposed on employers with regard to harassment.
>
> (3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.
>
> (4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

[Gov. Code § 12940(j).

241. As defined by the FEHA, "physical disability" includes:

1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

   A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal . . . , reproductive, . . . skin, and endocrine.

   B) Limits a major life activity. . . .

2) Any other health impairment not described in paragraph (1) that requires special education or related services.

3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition,

> cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

[Gov. Code § 12926(m).]

242. At all relevant times herein, Plaintiff was a disabled person within the meaning of Government Code sections 12926(m) and 12926.1(b) because she was a person with numerous actual physical impairments which were each disabling, or potentially disabling in the future.

243. At all relevant times herein, as a disabled employee, Plaintiff was within a class protected by the FEHA.

244. Plaintiff suffers from numerous physical disabilities including, but not limited to:

a) A severe musculoskeletal disability of the lumbar spine, which has required surgery, steroid injections, selective root blocks, and numerous other treatments;

b) Reproductive disabilities including an emergency hysterectomy, an abrupt menopause, and numerous complications of menopause including, but not limited to, needing to sleep up to 16 hours per night, memory loss, difficulty concentrating, and inability to think or reason at her normal level;

c) A skin disability consisting of rashes, itchiness, and skin which was constantly sweaty, causing it to be difficult for her hysterectomy incision to heal, and causing her to develop a postoperative wound infection;

d) An immunological disability consisting of an unspecified auto-immune disorder, which contributes to Plaintiff's need to sleep up to 16 hours per night;

e) An endocrine disability consisting of severe hypothyroidism and extreme hormone imbalances, which contributes to Plaintiff's need to sleep up to 16 hours per night; and

f) A neurological disability consisting of extreme vertigo, dizziness, and disequilibrium which were caused by typhus, and which prevent Plaintiff from being able to drive.

245. At all relevant times herein, Defendants had notice of Plaintiff's disabilities, need for accommodations, need for protected medical leave, and need for medical treatment.

246. Defendants knew about Plaintiff's lumbar spine disability beginning in late 2009/early 2010,

because Plaintiff told both her immediate supervisor, Sonja Dawson, and the Human Resources Department that she had been diagnosed with severe lumbar radiculopathy and was receiving lumbar epidural steroid injections and selective nerve root blocks. In March 2010, Plaintiff underwent spinal surgery, and she notified her immediate supervisor and the Human Resources Department of this at the time.

247. In September 2010, Plaintiff informed her new supervisor in the Housing Enforcement Department of her lumbar spine disability, and about the pain she was having especially when sitting in her desk chair at work (at her office in the San Pedro City Hall). Over the next few months, Plaintiff repeatedly told Jonathan Galatzan about the pain she was experiencing while sitting. Defendants harassed Plaintiff based on her disability by failing to initiate a timely, good-faith, interactive process or do anything else regarding Plaintiff's complaints of pain caused by sitting at her desk.

248. Over the years, Plaintiff told all her immediate supervisors, and numerous other people in Defendant CITY's Human Resources and Personnel Departments (including the Occupational Safety and Health Division of Defendant CITY's Personnel Department) about her lumbar spine disability and her need for accommodations. For example, Plaintiff told Donald Cocek (starting in about November 2011), Defendant BRENTE (starting in about June 2013), Wanda Hudson (starting in about January 2016), Daniela Zaccaro (starting in about February 2016), Cristina Sarabia (starting in about June 2016), and David Trujillo (starting in about July 2017), among others, about her lumbar spine disability and her need for accommodations.

249. Plaintiff also told numerous other persons who were agents and/or employees of EMPLOYER Defendants about her need for work restrictions and for reasonable accommodations for her lumbar spine (musculoskeletal) disability starting in late 2009 or early 2010, and continuing to the present. She even submitted prescriptions from her doctors relating to such things as bending, stooping, lifting, and sitting for more than one hour, standing for more than one hour, needing various ergonomic furniture and equipment, and needing an ergonomic evaluation of her office.

250. Defendants knew about Plaintiff's reproductive disabilities beginning in March 2016, when Plaintiff informed Defendant BRENTE (Plaintiff's immediate supervisor at the time), Cristina Sarabia, and Wanda Hudson that she was having an emergency hysterectomy. Plaintiff told Defendant BRENTE and Wanda Hudson about the exhaustion and need for 16 hours of sleep per night, and about the memory loss,

difficulty concentrating, and inability to think or reason at her normal level, starting in about May 2016. Plaintiff discussed her reproductive disabilities with David Trujillo (starting in about July 2017), and with other employees of Defendants starting in May 2016 and continuing to the present. Defendants also knew about Plaintiff's need for reasonable accommodations, and about her need for work restrictions, permission to work from home, a flexible work schedule, reduced hours, and extended leave.

251. Defendants also knew about Plaintiff's skin disabilities, consisting of rashes, itchiness, and skin which was constantly sweaty (causing delayed healing of her hysterectomy incision), beginning in about May 2016, when she told Defendant BRENTE and Wanda Hudson about these medical issues. Plaintiff also discussed her skin disabilities with David Trujillo (starting in about July 2017 and continuing to the present), and with other employees of Defendants starting in May 2016 (and continuing to the present).

252. Defendants also knew about Plaintiff's endocrine disability, consisting of severe hypothyroidism and hormone imbalance, beginning in about May 2016, when she told Defendant BRENTE and Wanda Hudson about this disability. Plaintiff also discussed her endocrine disability with David Trujillo (starting in about July 2017 and continuing to the present), and with other employees of Defendants starting in May 2016 (and continuing to the present). Plaintiff told Defendants that, at least partly because of her endocrine disability, she was needing to sleep up to 16 hours per night, and requested an accommodation for this in the form of protected leave and/or a reduced work schedule and/or permission to work from home.

253. Defendants also knew about Plaintiff's immunological disability, consisting of an unspecified auto-immune disorder, beginning in about May 2016, when she told Defendant BRENTE and Wanda Hudson about this disability. Plaintiff also discussed her endocrine disability with David Trujillo (starting in about July 2017 and continuing to the present), and with other employees of Defendants starting in May 2016 (and continuing to the present).

254. With notice of Plaintiff's numerous disabilities, on a severe and pervasive basis, beginning in or around approximately Spring 2011, continuing to the present, all Defendants, including Defendant BRENTE, have harassed Plaintiff due to and substantially motivated by Plaintiff's actual disabilities, need for accommodations and attempts to initiate a timely, good-faith, interactive process, and/or need for

protected finite medical leave through the following actions, among others:

a) Jonathan Galatzan harassed Plaintiff by assigning Plaintiff additional work consisting of code violation cases which required her to travel to downtown Los Angeles on a regular basis. (This occurred in approximately Spring 2011.)

b) Jonathan Galatzan harassed Plaintiff by assigning Plaintiff to a work area in downtown Los Angeles which consisted of a desk in a storage closet, which was **less** ergonomically correct than her office in San Pedro, and with a chair which was even more uncomfortable than her chair in San Pedro. (This occurred in approximately Spring 2011.)

c) Jonathan Galatzan harassed Plaintiff by issuing a Notice to Correct Deficiencies to Plaintiff, in which he accused her of failing to file four code violation cases on time, even though filing delays had been a longstanding problem within the Housing Enforcement Department for many years before Plaintiff was assigned to the unit. (This occurred on October 14, 2011.)

d) Donald Cocek harassed Plaintiff by changing Plaintiff's job duties further, so that she had to work full-time doing work which was not supposed to be any part of her job, and to do so from a storage closet in downtown Los Angeles. There was no legitimate business reason for doing this. It was done purely to harass Plaintiff. (This occurred in approximately November 2011.)

e) Donald Cocek harassed Plaintiff by failing to assign cases to other attorneys while Plaintiff was on extended medical leave in order to set Plaintiff up for discipline. There was obviously no legitimate business reason for Donald Cocek to ignore cases for which he was ultimately responsible. It was done purely to harass Plaintiff and to set her up for disciplinary action. (This occurred from approximately October 2012 to approximately January 29, 2013.)

f) Donald Cocek harassed Plaintiff by giving Plaintiff a Notice to Correct Deficiencies for failing to file cases which he had assigned to her **after** she went out on approved leave, and the deadlines for which had passed **before** she returned from leave. (This occurred in January 2013.)

g) Defendants harassed Plaintiff by failing to recommend Plaintiff for promotion or to promote Plaintiff when she was transferred to the Police Litigation Unit, even though this position involves longer hours than Plaintiff's previous position, and a significant amount of responsibility. (This occurred in June 2013.)

h) Defendants harassed Plaintiff by failing and refusing to reasonably accommodate Plaintiff's repeated requests for reasonable accommodations. (This occurred from June 2013 to the present.)

i) Defendant BRENTE harassed Plaintiff by failing to recommend Plaintiff for promotion, and EMPLOYER Defendants harassed Plaintiff by failing to promote Plaintiff on her anniversary date in March 2014.

j) Defendant BRENTE harassed Plaintiff by failing to recommend Plaintiff for promotion, and EMPLOYER Defendants harassed Plaintiff by failing to promote Plaintiff on her anniversary date in March 2015.

k) Defendant BRENTE harassed Plaintiff **for years** by failing to order, purchase, and/or install Plaintiff's ergonomic furniture and equipment, even though it had been made clear to him by Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, that it was **his responsibility** to order, purchase, and install Plaintiff's ergonomic equipment and furnishings. (This occurred from February 16, 2016 to the present.)

l) Defendant BRENTE harassed Plaintiff by failing to recommend Plaintiff for promotion, and EMPLOYER harassed Plaintiff by Defendants failing to promote Plaintiff on her anniversary date in March 2016.

m) Defendant BRENTE harassed Plaintiff by failing to recommend Plaintiff for promotion, and EMPLOYER Defendants harassed Plaintiff by failing to promote Plaintiff on her anniversary date in March 2017.

n) Defendant BRENTE harassed Plaintiff by changing the official description of Plaintiff's essential job functions to make it appear she could not perform the essential job functions for her position. Defendant BRENTE knew very well that adding physical functions to Plaintiff's formal list of essential job functions would complicate Plaintiff's attempts to return to work with reasonable accommodations. (This occurred on June 12, 2017.)

o) Defendant BRENTE harassed Plaintiff by criticizing Plaintiff for missing work and not working from 8:30 a.m. to 5:00 p.m., even though Plaintiff had told Defendant BRENTE about her medical issues in detail (which legally she was not required to do), and had explained to him the reasons why she had to take time off work for so many medical appointments, and had to sleep 12 to 16 hours

per night, making it very difficult to arrive at work by 8:30 a.m. and to work for eight hours per day. There was not even any business reason which required Plaintiff to be physically at the office from 8:30 a.m. to 5:00 p.m. (This occurred on June 21, 2017.) Additionally, it is quite common in the Police Litigation Unit for attorneys to have flex time.

p) Defendant BRENTE harassed Plaintiff by repeatedly failing and refusing to assign another attorney to cover Plaintiff's cases while she was on leave for her disabilities, causing some filing deadlines to be missed on cases which were assigned to Plaintiff. (This occurred from summer 2017 through February 12, 2018, and again from February 27, 2018 through October 16, 2018.)

q) Defendants harassed Plaintiff by not only failing to recommend for promotion or promote Plaintiff, but even withholding/denying Plaintiff's anniversary date step. (This occurred in March 2018.)

r) Defendant BRENTE harassed Plaintiff by issuing a formal Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties she was having at work due to her physical disabilities and serious health conditions, despite the fact that: a) Plaintiff had been on FMLA/CFRA leave from approximately March 12 through June 12, 2010 for her spinal surgery, b) Plaintiff had been on FMLA/CFRA leave from approximately March 11, 2016 to June 6, 2016 for her endometriosis and fibroid uterus, and then for the emergency hysterectomy and the complications relating to that surgery, c) Plaintiff had communicated constantly with Defendant BRENTE regarding her various physical disabilities and serious health conditions, and had answered many more questions regarding the details of her serious health conditions than she was legally required to, d) Plaintiff had been attempting to get ergonomic furniture which would at least lessen her back pain **since early 2011,** e) Defendant BRENTE was the person responsible for having the ergonomic items installed but the items had been sitting in boxes in Plaintiff's office since July 2016, f) Plaintiff had submitted a formal request for reasonable accommodations to Human Resources and met with Human Resources about this, and g) Plaintiff had filed a workers' compensation claim on August 14, 2017. (This occurred on November 7, 2017.)

s) Defendants, including Defendant BRENTE, harassed Plaintiff by summoning Plaintiff to the office to receive the November 7, 2017 Notice to Correct Deficiencies, **while** Plaintiff was at the doctor to obtain a note which Vivienne Swanigan had said was required. The meeting was attended by

Plaintiff, Defendant BRENTE, union representative Oscar Winslow, and a woman from Personnel (name unknown). During this meeting, Plaintiff described in detail all the health issues which were making it difficult for her to work regular hours related to her severe menopause (hormone imbalances), her hypothyroidism, and her back injury. She explained that much of the time when she was late to work, it was because she required so much sleep because of the menopause symptoms (extreme hormone imbalances), combined with her hypothyroidism. She again requested reasonable accommodations for all these physical disabilities, such as permission to work from home, a flexible work schedule, reduced hours, extended (protected) leave, and ergonomic improvements to her office equipment and furnishings. Rather than discuss what reasonable accommodations might be possible, Defendant BRENTE said to Plaintiff, right in front of Oscar Winslow and the woman from Personnel, "We all know the workers' comp claim is bullshit." This was an accusation of Plaintiff committing an illegal act (workers' compensation fraud). (This occurred on November 8, 2017.)[17]

t) EMPLOYER Defendants harassed Plaintiff by telling her she had to completely re-start the ergonomic evaluation process, even though there were unopened boxes of ergonomic items in Plaintiff's office. (This occurred on February 14, 2018.)

u) Defendant BRENTE harassed Plaintiff by admonishing her for not keeping up with her work while she was in excruciating pain and attempting to work from home. (This occurred on March 8, 2018.)

v) Defendants harassed Plaintiff by failing and/or refusing, year after year as discussed above, to promote Plaintiff (and even denying/withholding her anniversary step in March 2018), even while non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted. (This began almost immediately after Defendants learned of Plaintiff's musculoskeletal disability and has continued to the present.)

w) Defendant BRENTE harassed Plaintiff by failing and/or refusing to recommend Plaintiff for promotion in 2015, 2016, 2017, or 2018 (and even withholding/denying Plaintiff her anniversary step in March 2018), even though he recommended that non-disabled attorneys with less experience,

[17]Plaintiff actually prevailed in that workers' compensation claim, so apparently it was not "bullshit."

who were performing substantially similar or even less complex and less demanding work, be promoted.

x) Defendants harassed Plaintiff by telling Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment, and giving her no indication regarding when the equipment was expected to arrive. (This occurred on June 8, 2018.)

y) Defendants harassed Plaintiff by terminating Plaintiff's health benefits (without notice) while she had still not received any response to her April 25, 2018 request to take a FMLA/CFRA leave of absence, and the ergonomic equipment and furnishings had still not been installed in her office, which would have allowed her to return to work. (This occurred on June 9, 2018.)

z) EMPLOYER Defendants harassed Plaintiff by completely ignoring the 36-page letter sent to Zna Portlock Houston, Special Counsel Personnel Standards and Employee Engagement (Office of the Los Angeles City Attorney). (This letter was sent on October 15, 2018, and was actually delivered to Defendant CITY ATTORNEY'S OFFICE on October 16, 2018.)

aa) Defendants harassed Plaintiff by David Trujillo and then Vivienne Swanigan to send letters stating that Plaintiff was "absent without leave," and threatening loss of Plaintiff's job right after Plaintiff submitted numerous reports from U.S. HealthWorks regarding her neurological disability consisting of vertigo resulting from typhus.

bb) Defendants harassed Plaintiff by failing and refusing to pay Plaintiff for her 2019 holiday and sick leave.

cc) Defendants harassed Plaintiff by refusing Plaintiff's driving restriction despite received numerous notices from City-designated doctors saying Plaintiff was not to drive or operative heavy machinery.

dd) Defendants harassed Plaintiff by refusing to fumigate City Hall or City Hall East even after Plaintiff contracted typhus there.

ee) Defendants changed Plaintiff's health insurance from Anthem to Kaiser Permanente HMO without permission or notice.

ff) Defendants harassed Plaintiff by, in early December 2018, changing Plaintiff's health insurance from Anthem, to Kaiser Permanente, without anyone even giving her any notice of this change.

(Plaintiff found out when she attempted to get a prescription refilled at the pharmacy.)

gg) Defendants harassed Plaintiff by, on January 1, 2019, terminating Plaintiff's health insurance.

hh) Defendants harassed and retaliated against Plaintiff by demoting her to Pacific Office, Criminal Branch, where she would be handling misdemeanor arraignments (an entry-level task), and pretending the demotion was an "accommodation" for Plaintiff. Plaintiff alleges information and believe that Defendant BRENTE was one of the people responsible for this transfer.

ii) Defendants harassed Plaintiff by telling her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019," totally denying their part in causing Plaintiff's injuries. EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

ii) Defendants harassed Plaintiff by ordering her to report for work at Pacific Office, Criminal Branch, even though they knew the City-designated infectious disease specialist – _____ Sokolov, had excused Plaintiff from work through February 11.

jj) Defendants harassed Plaintiff by sending her detailed instructions regarding where she was supposed to **park** at Pacific Office, Criminal Branch, even though they knew **Plaintiff was not allowed to drive.**

kk) Defendants (including Defendant BRENTE) harassed Plaintiff by refusing to allow her to work from home (even though many other deputy city attorneys in the Police Litigation Unit do so, and even though Defendant BRENTE had insisted that Plaintiff do so).

ll) Defendants (including Defendant BRENTE) harassed Plaintiff by refusing to allow Plaintiff to work from a location in or near San Pedro (even though it could easily have been done).

mm) Defendants (including Defendant BRENTE) harassed Plaintiff by refusing to allow her to work a flexible work schedule (even though many other deputy city attorneys in the Police Litigation Unit do so).

nn) Defendants harassed Plaintiff by refusing to providing ergonomic equipment and furnishings **which her doctor ordered in 2011**.

oo) Refused Plaintiff "accommodations" which were simply the usual job benefits for other deputy city attorneys in the Police Litigation Unit.

pp) Defendants harassed Plaintiff by refusing to participate in a timely, good-faith, interactive process regarding Plaintiff's requests for reasonable accommodations.

qq) Defendants harassed Plaintiff by failing and refusing to conduct a timely, proper, and/or complete investigation of the disability harassment to which Plaintiff was subjected, and about which Plaintiff had complained.

255. Plaintiff was harmed as a result of Defendants' severe and pervasive harassment of her, which was based on Plaintiff's physical disabilities.

256. Defendants' severe and pervasive harassment of Plaintiff was a direct cause and a substantial factor in causing Plaintiff's harm.

257. In doing the acts alleged herein, Defendants, and each of them, were substantially motivated by Plaintiff's actual disabilities, need for accommodations, and/or need for legally protected finite medical leave.

258. As a direct and legal result of Defendants' unlawful harassment and related actions and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

259. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

260. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been

forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

261. The aforementioned acts by DOE Defendants and Defendant BRENTE were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) and Defendant BRENTE in an amount to be determined at the time of trial.

262. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

FIFTH CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF SEX

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(a)]

[Against EMPLOYER Defendants and DOE Defendants]

263. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

264. At all relevant times for purposes of this Complaint, the FEHA was in full force and effect and binding on Defendants. The FEHA provides:

> It is an unlawful employment practice, unless based upon a bona fide occupational qualification . . . (a) For an employer, because of the . . . sex . . . of any person, to . . . discriminate against the person in compensation or in terms, conditions, or privileges of employment.

[Gov. Code § 12940(a).]

265. At all relevant times herein, as a female employee, Plaintiff was within a class protected by the FEHA.

266. At all relevant times herein, Plaintiff was qualified for and/or competently performed the positions she held with Defendants.

267. As a result of, and substantially motivated by, Plaintiff's sex, Defendants, and each of them, treated Plaintiff differently, disparately, and negatively. Defendants subjected Plaintiff to discriminatory treatment and/or adverse employment actions as described herein.

268. Defendants engaged in unlawful employment practices in violation of the FEHA by discriminating against Plaintiff based on her sex, and these practices were constant and continuous. The discrimination started in spring 2011, while Plaintiff was working in the Housing Enforcement Unit, and reporting directly to Jonathan Galatzan. Because of Plaintiff's sex, Jonathan Galatzan changed Plaintiff's job assignment so that she was required to work part of the time from a storage closet in downtown Los Angeles, doing work which was not originally part of her job and which she did not want to do. This increased Plaintiff's job responsibilities and workload to substantially exceed the job responsibilities and workload of male employees in comparable positions, and with comparable job experience and skills. The discrimination continued and included, but was not limited to, the following:

a) Donald Cocek changing Plaintiff's job duties further, so that she had to work full-time doing work which was not supposed to be any part of her job, and to do so from a storage closet in downtown Los Angeles. Meanwhile, the part of Plaintiff's position which she had enjoyed (and which was actually what she was transferred into the position to do), involving mediating disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance, was assigned to a male Deputy City Attorney who already had a position. There was no legitimate business reason for doing this. (This occurred in approximately November 2011.)

b) Donald Cocek staring at Plaintiff's breasts every time she attempted to have a private conversation with him (and even sometimes when other people were present). (This occurred during late 2011 and 2012.)

c) Donald Cocek failing to assign cases to other attorneys while Plaintiff was on extended medical leave in order to set Plaintiff up for discipline. Plaintiff alleges on information and belief that Donald Cocek did not act in this fashion regarding male employees in comparable positions, and

with comparable job experience and skills who were out on extended medical leave. (This occurred from approximately October 2012 to approximately January 29, 2013.)

d) Donald Cocek giving Plaintiff a Notice to Correct Deficiencies for failing to file cases which he had assigned to her **after** she went out on approved leave, and the deadlines for which had passed **before** she returned from leave. Plaintiff alleges on information and belief that Donald Cocek did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills who were out on extended medical leave. (This occurred in January 2013.)

e) Defendants failing and/or refusing to promote Plaintiff to a rank of Deputy City Attorney IV, Step C, or higher in June 2013, when she was transferred to the Police Litigation Unit. In the Police Litigation Unit, Plaintiff defends multimillion-dollar claims against Defendant CITY in both state and federal court trials. This position involves longer hours than Plaintiff's previous position, and a significant amount of responsibility, and Plaintiff should have been promoted to at least a Deputy City Attorney IV, Step C, when she was transferred to this position, but she was not, as a direct result of her sex. Plaintiff alleges on information and belief that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step C, or higher.

f) Defendants failing and/or refusing to promote Plaintiff to a rank of Deputy City Attorney IV, Step D, because of her sex in March 2014. Plaintiff alleges on information and belief that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step D, or higher.

g) Defendants failing and/or refusing to promote Plaintiff to a rank of Deputy City Attorney IV, Step E, because of her sex in March 2015. Plaintiff alleges on information and belief that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step E2, or higher.

h) Defendant BRENTE failing to order, purchase, and/or install Plaintiff's ergonomic furniture and equipment, even though the ergonomic equipment of a male attorney in the same department was quickly purchased and installed. (This occurred from February 16, 2016 to the present.)

i) Defendants failing and/or refusing to promote Plaintiff to a rank of Deputy City Attorney IV, Step

F, because of her sex in March 2016. Plaintiff alleges on information and belief that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step F, or higher.

j) Defendants failing and/or refusing to promote Plaintiff to a rank of Deputy City Attorney IV, Step 10, because of her sex in March 2017. Plaintiff alleges on information and belief that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 10, or higher.

k) Defendant BRENTE changing the official description of Plaintiff's essential job functions to make it appear she could not perform the essential job functions for her position. Plaintiff alleges on information and belief that Defendant BRENTE did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This occurred on June 12, 2017.)

l) Defendant BRENTE asking Plaintiff why others in the Police Litigation Unit (referring to a male attorney) were able to get ergonomic equipment with ease, and she had so much trouble. (This occurred in approximately October 2017.)

m) Defendants failing and/or refusing to promote Plaintiff to a rank of Deputy City Attorney IV, Step 11, because of her sex in March 2018, and even denying/withholding her anniversary step. Plaintiff alleges on information and belief that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 11, or higher.

n) Defendants refusing to allow Plaintiff to have a flexible work schedule, or to sometimes work from home. Plaintiff alleges on information and belief that Defendants allowed male employees in comparable positions, and with comparable job experience and skills, to have flexible work schedules, basically setting their own hours, and to work from home when they chose. (This occurred from 2013 to the present.)

o) Defendant BRENTE criticizing Plaintiff for missing work and not working from 8:30 a.m. to 5:00 p.m., even though Plaintiff had told Defendant BRENTE about her medical issues in detail (which legally she was not required to do), and had explained to him the reasons why she had to take time

off work for so many medical appointments, and had to sleep 12 to 16 hours per night, making it very difficult to arrive at work by 8:30 a.m. and to work for eight hours per day. There was not even any business reason which required Plaintiff to be physically at the office from 8:30 a.m. to 5:00 p.m. Plaintiff alleges on information and belief that Defendant BRENTE allowed male employees in comparable positions, and with comparable job experience and skills, to have flexible work schedules, basically setting their own hours, and to work from home when they chose. (This occurred on June 21, 2017.)

p) Defendant BRENTE repeatedly failing and refusing to assign another attorney to cover Plaintiff's cases while she was on leave for her disabilities, causing some filing deadlines to be missed, and forcing Plaintiff to work from home while she was on sick leave. Plaintiff alleges on information and belief that Defendant BRENTE did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This occurred from summer 2017 through February 12, 2018, and again from February 27, 2018 through October 16, 2018.)

q) Defendant BRENTE issuing a formal Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties she was having at work due to her physical disabilities and serious health conditions, despite the fact that she had been requesting reasonable accommodations for years. Plaintiff alleges on information and belief that Defendant BRENTE did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This occurred on November 7, 2017.)

r) Defendant BRENTE referring to Plaintiff's workers' compensation claim as "bullshit." Plaintiff alleges on information and belief that Defendant BRENTE did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This occurred on November 8, 2017.)

s) Defendant BRENTE admonishing Plaintiff for not keeping up with her work while she was in excruciating pain and attempting to work from home. This was clearly discrimination and harassment, as there was no legitimate business reason to admonish an employee who, in spite of excruciating pain, was trying to keep up with the work which was assigned to her. Plaintiff alleges on information and belief that Defendant BRENTE did not act in this fashion regarding male

employees in comparable positions, and with comparable job experience and skills. (This occurred on March 8, 2018.)

t) Defendants failing and/or refusing, year after year as discussed above, to promote Plaintiff, even while male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted. (This occurred from at least June 2013, when Plaintiff was transferred to the Police Litigation Unit, to the present.)

u) Defendant BRENTE failing and/or refusing to recommend Plaintiff for promotion in 2015, 2016, 2017, or 2018, even though he recommended that male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, be promoted.

v) Defendants telling Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment, and giving her no indication regarding when the equipment was expected to arrive. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. Delaying providing Plaintiff with her ergonomic equipment for **years**, and then requiring her to go through a second ergonomic evaluation, and to wait many months longer, was clearly done to discriminate against and harass Plaintiff, as there was no legitimate business reason for doing so. (This occurred on June 8, 2018.)

w) Defendants terminating Plaintiff's health benefits (without notice) while she had still not received any response to her April 25, 2018 request to take a FMLA/CFRA leave of absence, and the ergonomic equipment and furnishings had still not been installed in her office, which would have allowed her to return to work. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This occurred on June 9, 2018.)

x) Defendants threatening to terminate Plaintiff only three hours after she advised them of work restrictions imposed by U.S. HealthWorks, which is the occupational medicine provider designated by EMPLOYER Defendants. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job

experience and skills. (This occurred on December 21, 2018.)

y) Defendants stating that Plaintiff was absent without leave, even though she had submitted proper documents from U.S. HealthWorks indicating she was temporarily partially disabled and unable to drive. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This happened on December 31, 2018.)

z) Defendants denying Defendant CITY had a duty to reasonably accommodate Plaintiff's disability of being unable to drive due to her severe vertigo. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This happened on December 31, 2018.)

aa) Defendants refusing to participate in a timely, good-faith, interactive process regarding Plaintiff's requests for reasonable accommodations. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills.

bb) Defendants failing and refusing to provide reasonable accommodations to Plaintiff so that she could perform her job without being in agonizing pain, even though Plaintiff repeatedly requested reasonable accommodations. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills.

cc) Defendants failing and refusing to conduct a timely, proper, and/or complete investigation of the disability harassment to which Plaintiff was subjected. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills.

dd) Defendants failing and refusing to pay Plaintiff for her 2019 holiday and sick leave and changing her health insurance from Anthem to Kaiser Permanente HMO without permission or notice. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male

employees in comparable positions, and with comparable job experience and skills.

ee) Defendants again terminating Plaintiff's health insurance on January 1, 2019.Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills.

ff) Defendants demoting Plaintiff to a position where she would handle misdemeanor arraignments at Pacific Office, Criminal Branch. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills.

gg) Defendants failing and refusing to conduct a timely, proper, and/or complete investigation of the sex discrimination and harassment complaint Plaintiff submitted to EMPLOYER Defendants' Office of Discrimination Complaint Resolution on October 16, 2018.

269. The acts and conduct of Defendants and their agents, and each of them, were in violation of the FEHA. The FEHA imposes certain duties upon Defendants concerning discrimination against persons such as Plaintiff, on the basis of sex. The FEHA was intended to prevent the type of injury and damage set forth herein.

270. Defendants and their agents failed and/or refused to conduct a timely, proper, and/or complete investigation of the sex discrimination to which Plaintiff was subjected.

271. Defendants and their agents also violated the FEHA by failing to take all reasonable steps necessary to prevent such discrimination from occurring, in violation of Government Code section 12940(k). During the entire relevant period, Defendants created and fostered an environment where unlawful discrimination was condoned, encouraged, tolerated, sanctioned, and ratified. During the entire relevant period, Defendants failed to provide any and/or adequate training, education, and/or information to their personnel, and most particularly to management and supervisory personnel with regard to policies and procedures regarding avoiding unlawful discrimination. Defendants failed to take reasonable steps to prevent unlawful discrimination from being inflicted on Plaintiff, and this resulted in Plaintiff being discriminated against on a constant and continuous basis.

272. As a direct and legal result of Defendants' unlawful actions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer

a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

273. As a direct and legal result of Defendants' unlawful actions, Plaintiff has also suffered and continues to suffer an exacerbation of her physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

274. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

275. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

276. As a direct result of Defendants' discriminatory acts, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

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SIXTH CAUSE OF ACTION

HARASSMENT ON THE BASIS OF SEX

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(j)]

[Against All Defendants]

277. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

278. At all relevant times for purposes of this Complaint, the FEHA was in full force and effect and binding on Defendants. The FEHA provides:

> (j) (1) For an employer . . ., or any other person, because of . . . sex, . . . to harass an employee . . . . Harassment of an employee . . . by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. . . . An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.
>
> (2) The provisions of this subdivision are Declaratory of existing law, except for the new duties imposed on employers with regard to harassment.
>
> (3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.
>
> (4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.
>
> (B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.
>
> (C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

[Gov. Code § 12940(j).]

279. At all relevant times herein, as a female employee, Plaintiff was within a class protected by the FEHA.

280. On a severe and/or pervasive basis beginning in or around approximately Spring 2011 and continuing to the present, Defendants, and each of them, harassed Plaintiff due to and substantially motivated by Plaintiff's sex through the following actions, among others:

a) Jonathan Galatzan harassed Plaintiff by changing Plaintiff's job assignment so that she was required to work part of the time from a storage closet in downtown Los Angeles, doing work which was not originally part of her job and which she did not want to do. Plaintiff alleges on information and belief that Jonathan Galatzan did not harass male employees in this manner. (This occurred in spring 2011.)

b) Donald Cocek harassed Plaintiff by changing Plaintiff's job duties further, so that she had to work full-time doing work which was not supposed to be any part of her job, and to do so from a storage closet in downtown Los Angeles. Meanwhile, the part of Plaintiff's position which she had enjoyed (and which was actually what she was transferred into the position to do), involving mediating disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance, was assigned to a male Deputy City Attorney who already had a position. There was no legitimate business reason for doing this; it was done purely for purposes of harassing Plaintiff. (This occurred in approximately November 2011.)

c) Donald Cocek harassed Plaintiff by staring at Plaintiff's breasts **every single time** she attempted to have a private conversation with him (and sometimes when other people were present). (This occurred during late 2011 and 2012.)

d) Donald Cocek harassed Plaintiff by failing to assign cases to other attorneys while Plaintiff was on extended medical leave in order to set Plaintiff up for discipline. There was obviously no legitimate business reason for Donald Cocek to ignore cases for which he was ultimately responsible. It was done purely to harass Plaintiff, and to set her up for disciplinary action. (This occurred from approximately October 2012 to approximately January 29, 2013.)

e) Donald Cocek harassed Plaintiff by giving Plaintiff a Notice to Correct Deficiencies for failing to

file cases which he had assigned to her **after** she went out on approved leave, and the deadlines for which had passed **before** she returned from leave. This was clearly harassment, since there is no legitimate business reason for disciplining an employee for things they failed to do while they were on medical leave. In fact, this is poor business practice, because it is illegal. (This occurred in January 2013.)

f) Defendant BRENTE harassed Plaintiff by failing to order, purchase, and/or install Plaintiff's ergonomic furniture and equipment, even though the ergonomic equipment of a male attorney in the same department was quickly purchased and installed. Defendant BRENTE even taunted Plaintiff about the fact that the male employee obtained his ergonomic equipment and furniture so quickly. Additionally, Defendant BRENTE told Plaintiff she should install the equipment herself, even though doing so would have required using a power drill to drill into a wooden desk. Plaintiff alleges on information and belief that Defendant BRENTE did not harass male employees in this manner. (This occurred from February 16, 2016 to the present.)

g) Defendant BRENTE harassed Plaintiff by micro-managing and criticizing Plaintiff for not working from 8:30 a.m. to 5:00 p.m., even though male employees were allowed to work flexible hours and even to work from home. There was no legitimate business reason for this harassment, since Plaintiff could perform much of her job during hours later in the day, or even from home. Defendant BRENTE either refused to believe that menopause could be disabling, or he simply did not care. (This occurred during June 2017.)

h) Defendant BRENTE harassed Plaintiff by repeatedly failing and refusing to assign another attorney to cover Plaintiff's cases while she was on leave for her disabilities, causing some filing deadlines to be missed, and forcing Plaintiff to work from home while she was on sick leave. There was obviously no legitimate business reason for Defendant BRENTE to ignore cases for which he was ultimately responsible. It was done purely to harass Plaintiff, and to set her up for disciplinary action. Plaintiff alleges on information and belief that Defendant BRENTE did not harass male employees in this manner. (This occurred from summer 2017 through February 12, 2018, and again from February 27, 2018 through October 16, 2018.)

i) Defendants harassed Plaintiff by not only failing to recommend for promotion or promote Plaintiff,

but even withholding/denying Plaintiff's anniversary date step. Plaintiff alleges on information and belief that Defendant BRENTE did not harass male employees in this manner. (This occurred in March 2018.)

j) Defendant BRENTE harassed Plaintiff by issuing a formal Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties she was having at work due to her physical disabilities and serious health conditions, despite the fact that she had been requesting reasonable accommodations for years. This was clearly harassment, since Defendant BRENTE knew it was improper to issue a Notice to Correct Deficiencies in such a situation. Plaintiff alleges on information and belief that Defendant BRENTE did not believe menopause could be disabling, or that he simply did not care. Plaintiff alleges on information and belief that Defendant BRENTE did not harass male employees in this manner. (This occurred on November 7, 2017.)

k) Defendant BRENTE harassed Plaintiff by harassed Plaintiff by referring to Plaintiff's workers' compensation claim as "bullshit." This was obviously said to harass Plaintiff, since there was no valid business reason for making such a statement, and it is of course improper, and possibly even illegal, to accuse an employee of committing workers' compensation insurance fraud. Plaintiff alleges on information and belief that Defendant BRENTE did not harass male employees in this manner. (This occurred on November 8, 2017.)[18]

l) Defendant BRENTE harassed Plaintiff by admonishing Plaintiff for not keeping up with her work while she was in excruciating pain and attempting to work from home. This was clearly harassment, as there was no legitimate business reason to admonish an employee who, in spite of excruciating pain, was trying to keep up with the work which was assigned to her. Plaintiff alleges on information and belief that Defendant BRENTE did not harass male employees in this manner. (This occurred on March 8, 2018.)

m) Defendant BRENTE harassed Plaintiff by failing and/or refusing to recommend Plaintiff for promotion in 2015, 2016, 2017, or 2018 (as discussed in detail above) even though he recommended that male attorneys with less experience, who were performing substantially similar

[18]Plaintiff actually prevailed in that workers' compensation claim, so apparently it was not "bullshit."

or even less complex and less demanding work, be promoted. Whenever Plaintiff asked when she would be promoted, Defendant BRENTE just laughed. To this day, Defendant BRENTE has failed and refused to recommend Plaintiff for promotion. Plaintiff alleges on information and belief that Defendant BRENTE does not harass male employees in this manner.

n) Defendants harassed Plaintiff by failing and/or refusing, year after year as discussed above, to promote Plaintiff, even while male attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted. (This has continued to the present.) To this day, Defendants have failed to promote Plaintiff. Plaintiff alleges on information and belief that Defendants do not harass male employees in this manner.

o) Defendants harassed Plaintiff by telling Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment, and giving her no indication regarding when the equipment was expected to arrive. Delaying providing Plaintiff with her ergonomic equipment for **years**, and then requiring her to go through a second ergonomic evaluation, and to wait many months longer, was clearly done to harass Plaintiff, as there was no legitimate business reason for doing so. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees. In fact, a male employee in the same department had received his ergonomic furnishings very quickly. (This occurred on June 8, 2018.)

p) Defendants harassed Plaintiff by failing and/or delaying for years to order the ergonomic equipment and furniture which were necessities for Plaintiff, Defendants failing and/or delaying for years the installation and set-up of the ergonomic equipment and furniture which were necessities for Plaintiff, and Defendants repeatedly making misrepresentations and false promises to Plaintiff about the status of the ergonomic items being delivered and installed constituted harassment. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This occurred from 2011 to the present.)

q) Defendants harassed Plaintiff by terminating Plaintiff's health benefits (without notice) while she had still not received any response to her April 25, 2018 request to take a FMLA/CFRA leave of absence, and the ergonomic equipment and furnishings had still not been installed in her office,

which would have allowed her to return to work. This was done purely to harass Plaintiff. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This occurred on June 9, 2018.)

r) Defendants harassed Plaintiff by threatening to terminate Plaintiff only three hours after she advised them of work restrictions imposed by U.S. HealthWorks, which is the occupational medicine provider designated by EMPLOYER Defendants. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This occurred on December 21, 2018.)

s) Defendants harassed Plaintiff by stating that Plaintiff was absent without leave, even though she had submitted proper documents from U.S. HealthWorks indicating she was temporarily partially disabled and unable to drive. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This happened on December 31, 2018.)

t) Defendants harassed Plaintiff by denying Defendant CITY had a duty to reasonably accommodate Plaintiff's disability of being unable to drive due to her severe vertigo. Plaintiff alleges on information and belief that Defendants did not act in this fashion regarding male employees in comparable positions, and with comparable job experience and skills. (This happened on December 31, 2018.)

u) Defendants harassed Plaintiff by failing and refusing to pay Plaintiff for her 2019 holiday and sick leave and changing her health insurance from Anthem to Kaiser Permanente HMO without permission or notice. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This happened from January 1, 2019 to the present.)

v) Defendants harassed Plaintiff by, in early December 2018, changing Plaintiff's health insurance from Anthem, to Kaiser Permanente, without anyone even giving her any notice of this change. (Plaintiff found out when she attempted to get a prescription refilled at the pharmacy.)

w) Defendants harassed and retaliated against Plaintiff by demoting her to Pacific Office, Criminal Branch, where she would be handling misdemeanor arraignments (an entry-level task), and pretending the demotion was an "accommodation" for Plaintiff. Plaintiff alleges information and

believe that Defendant BRENTE was one of the people responsible for this transfer.

x) Defendants harassed Plaintiff by telling her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019," totally denying their part in causing Plaintiff's injuries. EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

y) Defendants harassed Plaintiff by ordering her to report for work at Pacific Office, Criminal Branch, even though they knew the City-designated infectious disease specialist – _____ Sokolov, had excused Plaintiff from work through February 11.

z) Defendants harassed Plaintiff by sending her detailed instructions regarding where she was supposed to **park** at Pacific Office, Criminal Branch, even though they knew **Plaintiff was not allowed to drive.**

ii) Defendants (including Defendant BRENTE) harassed Plaintiff by refusing to allow her to work from home (even though many other deputy city attorneys in the Police Litigation Unit do so, and even though Defendant BRENTE had insisted that Plaintiff do so).

jj) Defendants (including Defendant BRENTE) harassed Plaintiff by refusing to allow Plaintiff to work from a location in or near San Pedro (even though it could easily have been done).

kk) Defendants (including Defendant BRENTE) harassed Plaintiff by refusing to allow her to work a flexible work schedule (even though many other deputy city attorneys in the Police Litigation Unit do so).

ll) Defendants harassed Plaintiff by refusing to providing ergonomic equipment and furnishings **which her doctor ordered in 2011**, even though a male employee in the department received his ergonomic furniture quite quickly.

mm) Refused Plaintiff "accommodations" which were simply the usual job benefits for other deputy city attorneys in the Police Litigation Unit.

nn) Defendants harassed Plaintiff by failing and refusing to conduct a timely, proper, and/or complete investigation of the sex harassment to which Plaintiff was subjected, and about which Plaintiff had complained.

oo) Defendants harassed Plaintiff by refusing to participate in a timely, good-faith, interactive process regarding Plaintiff's requests for reasonable accommodations. This refusal to even talk to Plaintiff about the reasonable accommodations she needed was clearly harassment, so there was no legitimate business reason for doing so. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This occurred from 2011 to the present.)

pp) Defendants harassed Plaintiff by failing and refusing to provide reasonable accommodations to Plaintiff so that she could perform her job without being in agonizing pain, even though Plaintiff repeatedly requested reasonable accommodations. This refusal to provide Plaintiff with reasonable accommodations, which her doctors had been prescribing and she had been requesting for many years, was clearly done for the purpose of harassment; there was no legitimate business reason for Defendants' actions. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner. (This occurred from 2011 to the present.)

qq) Defendants harassed Plaintiff by failing and refusing to conduct a timely, proper, and/or complete investigation of the disability harassment to which Plaintiff was subjected. This is just one more way in which Defendants have been harassing Plaintiff for years, and are continuing to do so. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner.

rr) Defendants harassed Plaintiff by failing and refusing to conduct a timely, proper, and/or complete investigation of the sex discrimination and harassment complaint Plaintiff submitted to EMPLOYER Defendants' Office of Discrimination Complaint Resolution on October 16, 2018. Plaintiff alleges on information and belief that Defendants did not harass male employees in this manner.

281. In doing the acts alleged herein, Defendants, and each of them, were substantially motivated by Plaintiff's sex.

282. As a direct and legal result of Defendants' unlawful harassment and related actions and

omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

283. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

284. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

285. The aforementioned acts by DOE Defendants and Defendant BRENTE were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) and Defendant BRENTE in an amount to be determined at the time of trial.

286. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

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SEVENTH CAUSE OF ACTION

RETALIATORY DISCRIMINATION (RETALIATION)

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(h)]

[Against EMPLOYER Defendants and DOE Defendants]

287. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

288. Plaintiff was, at all times material hereto, a female employee with physical disabilities, who was within two protected classes covered by Government Code section 12940, and who engaged in legally protected conduct.

289. Plaintiff asserted her legal rights, and was retaliated against based on those assertions, on the following occasions, among others:

a) In March 2017, Plaintiff complained to Defendant BRENTE and to persons in the Human Resources Department of EMPLOYER Defendants that the denial of a promotion on her March 2017 anniversary date constituted discrimination based on her sex, her physical disabilities, and for taking FMLA/CFRA. She complained that a male employee, with disabilities comparable to her physical disabilities, would not be treated so callously.

b) Also in March 2017, Plaintiff complained to persons in the Human Resources Department of EMPLOYER Defendants that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee, with physical disabilities comparable to hers, would not be treated so callously as she was being treated.

c) In June 2017, in direct retaliation for her March 2017 complaints of discrimination, Defendants changed the essential job functions set forth in Plaintiff's job description to add new physical requirements which she could not satisfy.

d) On July 11, 2017, Plaintiff complained to David Trujillo and Margaret Shikibu, both of EMPLOYER Defendants' Human Resources Department, that she was being discriminated against

based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

e) From July 23 through August 5, 2017, Defendants forced Plaintiff to use 82 hours of sick leave and 38.5 hours of vacation in direct retaliation for Plaintiff's complaints of June 2017 and July 2017 (as well as for Plaintiff's earlier complaints of discrimination). Defendants further retaliated against Plaintiff during this time by requiring her to work part-time from home even though she was using accrued sick leave and accrued vacation.

f) In approximately October 2017, Plaintiff told Defendant BRENTE he was harassing and discriminating against her based on her sex and her physical disabilities by forcing her to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. It was obviously possible to provide reasonable accommodations, since a male in the department who had requested accommodations had been granted them within a very short time period.

g) On November 7, 2017, in direct retaliation for Plaintiff's October 2017 complaints of discrimination and harassment to Defendant BRENTE, Defendant BRENTE and EMPLOYER Defendants issued a Notice to Correct Deficiencies to Plaintiff.

h) During a November 8, 2017 meeting to discuss the November 7, 2017 Notice to Correct Deficiencies, Plaintiff pointed out that the Notice to Correct deficiencies dwelled **solely** on difficulties she was having at work due to her physical disabilities, and for which she had been requesting reasonable accommodations for seven years, and complained that this constituted harassment and discrimination based on her physical disabilities. Plaintiff also complained she was being discriminated against and harassed based on her sex because she did not believe male employees were being disciplined for having physical disabilities. Plaintiff also complained she was being punished for taking FMLA/CFRA leave, which she only had to take because Defendants refused to provide the reasonable accommodations she required.

i) In late November or early December 2017, Plaintiff complained to David Trujillo that she was being

discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated. Plaintiff also complained to David Trujillo that Defendant BRENTE was harassing and discriminating against her by failing to assign sufficient personnel to cover her cases while she was on sick leave, which caused deadlines and due dates to be missed, for which she was being blamed.

j) Plaintiff took intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018, and FMLA/CFRA leave from February 29, 2018 through June 9, 2018. During this time, Defendant BRENTE failed to assign sufficient personnel to cover Plaintiff's cases. In January or February 2018, Plaintiff complained to Defendant BRENTE that his failure to assign sufficient personnel to cover her cases while she was on FMLA/CFRA leave constituted discrimination and harassment based on her physical disabilities, her sex, and for taking FMLA/CFRA leave.

k) On February 14, 2018, Plaintiff complained to EMPLOYER Defendants (specifically, to David Trujillo) that Defendant BRENTE and Defendant CITY ATTORNEY'S OFFICE were harassing and discriminating against her because of taking FMLA/CFRA leave, and based on her physical disabilities and her sex for the same reasons as discussed above.

l) On March 8, 2018, in direct retaliation for Plaintiff's complaints of harassment and discrimination based on her physical disabilities, her sex, and for taking FMLA/CFRA leave, Defendant BRENTE sent Plaintiff an email in which he admonished her for not keeping up with her work while she was in excruciating pain and trying to work from home.

m) Also in March 2018, in direct retaliation for her complaints of harassment and discrimination based on her physical disabilities, her sex, and for taking FMLA/CFRA leave, Defendant BRENTE and EMPLOYER Defendants denied/withheld Plaintiff's anniversary date step for one year, which is virtually unheard of.

n) In March 2018, Plaintiff again complained to EMPLOYER Defendants that she was being discriminated against based on her sex and physical disabilities, and for taking FMLA/CFRA leave, by being forced to exhaust the vacation and sick leave which she had worked for years to accrue,

rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

o) On June 9, 2018, as a direct result of Plaintiff's complaints of discrimination and harassment (without the ergonomic equipment ever being installed in her office), Plaintiff was removed from payroll and her health insurance benefits were terminated with **no notice** by Defendants. This left Plaintiff, who clearly has numerous health issues, without health insurance, without notice. (EMPLOYER Defendants eventually notified Plaintiff that she had been removed from payroll and her health insurance benefits terminated over a month later – on July 13, 2018.)

p) On October 16, 2018, Plaintiff submitted a complaint to EMPLOYER Defendants' Office of Discrimination Complaint Resolution. In that complaint, Plaintiff alleged discrimination based on sex (among other things), and further alleged she had been subjected to a variety of harassing and discriminatory treatment, including several adverse employment actions.

q) On December 21, 2018, as a direct result of Plaintiff's complaints of discrimination and harassment, including the October 16, 2018 submission of a complaint to EMPLOYER Defendants' Office of Discrimination Complaint Resolution, Defendants notified Plaintiff was "absent without leave" and threatened to terminate Plaintiff only three hours after she advised them of work restrictions imposed by U.S. HealthWorks, which is the occupational medicine provider designated by EMPLOYER Defendants.

r) On December 31, 2018, as a direct result of Plaintiff's complaints of discrimination and harassment, including the October 16, 2018 submission of a complaint to EMPLOYER Defendants' Office of Discrimination Complaint Resolution, Defendants notified Plaintiff she was "absent without leave" and implied she would be terminated even though she had submitted all the necessary medical documents from U.S. HealthWorks indicating she was temporarily partially disabled and unable to drive.

s) On December 31, 2018, as a direct result of Plaintiff's complaints of discrimination and harassment, including the October 16, 2018 submission of a complaint to EMPLOYER Defendants' Office of Discrimination Complaint Resolution, Defendants failed and refused to pay Plaintiff for her 2019

holiday and sick leave and changed her health insurance from Anthem to Kaiser Permanente HMO without permission or notice.

t) On January 17, 2019, all named Defendants were served with Plaintiff's DFEH Complaint. Vivienne Swanigan immediately sent Plaintiff a letter stating that there was ""no staff, no equipment, no authorization, and no funds" and "no plan" to fumigate City Hall East. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 17, 2019 letter.

u) On January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for her speaking to the media about contracting typhus at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

290. On February 1, 2019, EMPLOYER Defendants were served with the Complaint in this matter.

291. On February 6, 2019 (only three workdays after EMPLOYER Defendants were served with the Complaint in this matter) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her new work location at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would

be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

292. On (February 8, 2019, knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

293. In doing the acts alleged herein, Defendants, and each of them, were substantially motivated by Plaintiff's complaints of harassment and discrimination based on her physical disabilities, her sex, and for taking FMLA/CFRA leave.

294. As a direct and legal result of Defendants' unlawful retaliation and related actions and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

295. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries,

conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

296. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

297. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

298. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

EIGHTH CAUSE OF ACTION

DISCRIMINATION FOR EXERCISING THE RIGHT TO MEDICAL LEAVE PURSUANT TO THE CALIFORNIA FAMILY RIGHTS ACT

[Including, specifically, Gov. Code § 12945.2(l)]

[Against EMPLOYER Defendants and DOE Defendants]

299. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

300. Pursuant to the California Family Rights Act, it " shall be an unlawful employment practice for an employer to . . . discriminate against any individual because of . . . [a]n individual's exercise of the right to family care and medical leave provided [pursuant to the Act]." [Gov. Code § 12945.2(l).]

A. Discrimination for March 11, 2016 through June 5, 2016 FMLA/CFRA leave

301. Plaintiff took FMLA/CFRA leave from March 11, 2016 through June 5, 2016. Before she went into emergency surgery, Plaintiff contacted Defendant BRENTE, Cristina Sarabia, and Wanda

Hudson, and advised all of them that she was having emergency surgery, and would need to take FMLA/CFRA leave for an unknown amount of time. Plaintiff also emailed Kellie Tran (Payroll and Special Funds Administrator) and told her she was having an emergency hysterectomy, and that she had already notified Defendant BRENTE. Kellie Tran emailed Cristina Sarabia and Wanda Hudson with the information the same day.

302. On March 24, 2016, Cristina Sarabia, Human Resources Director, sent Plaintiff a memo, advising her that her FMLA/CFRA leave was approved from March 18, 2016 through a date not yet determined. Cristina Sarabia also stated in the March 24, 2016 memo: "During your leave, the Payroll Section of the Los Angeles CITY ATTORNEY'S Office will input the appropriate payroll codes into our office's payroll system (D-Time)."

303. On April 26, 2016, Plaintiff's physician completed a medical certification in which he stated that Plaintiff would not be able to return to work until May 14, 2016, but that she was able to return to "limited work from home" as of April 18, 2016. On or about April 30, 2016, Plaintiff's physician **twice** faxed the Certification of Health Care Provider to Wanda Hudson of the Human Resources Department. Despite that, and despite the written assurances in Cristina Sarabia's March 24, 2016 memo, **on May 1, 2016, while Plaintiff was home recovering from surgery, Wanda Hudson sent Plaintiff an email telling her she was being removed from payroll, effective May 2, 2016.** Plaintiff had a substantial amount of accrued sick leave at this time, which Wanda Hudson knew. The May 1, 2016 email from Wanda Hudson caused added stress, which Plaintiff alleges contributed to the various physical problems she was having.

304. Plaintiff had originally planned to return to work on May 16, 2016, but due to medical complications, was forced to extend her FMLA/CFRA leave through June 5, 2016. Arranging for this FMLA/CFRA leave was an ordeal, because Wanda Hudson repeatedly requested more detailed medical information (to which EMPLOYER Defendants were not entitled) from Plaintiff's doctor, and threatened Plaintiff that if she did not provide further medical details, she would be classified as "AWOL." Plaintiff's doctor had sent a letter dated May 24, 2016, stating that Plaintiff was able to work from home for up to six hours per day, and that she could return to work on June 5, 2016. As a result of Wanda Hudson's haranguing and threats, on May 26, 2016, Plaintiff's physician wrote another letter, in which he stated:

> Elizabeth Greenwood is unable to commute to and from the workplace. She is able to work from home for up to six hours a day. As she heals she is able to go out for short outings, but she is unable to be in an office environment for an extended period of time. This restriction is currently until June 5, 2016 and will be reviewed with Ms. Greenwood to see if further restrictions are necessary to maintain and improve her health as she recovers.

305. While Plaintiff was on FMLA/CFRA leave from March 11, 2016 through June 5, 2016, Defendant BRENTE failed and refused to assign another attorney to cover Plaintiff's cases, so that deadlines and due dates were missed in some cases which were still assigned to Plaintiff. Plaintiff had voluntarily been doing some work from home starting in mid-April 2016, but was not paid for this time.[19]

306. On January 22, 2017, Plaintiff received a change (**not** a promotion) from Deputy City Attorney III, Step G, to Deputy City Attorney III, Step 13, in order to convert to the salary grade system.

307. On her anniversary date in March 2017, Plaintiff should have been promoted to Deputy City Attorney IV, Step 10, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. Instead, she received only a small bump from Deputy City Attorney III, Step 13, to Deputy City Attorney III, Step 14. This failure to promote Plaintiff was a direct result of her taking FMLA/CFRA leave in 2016, and Plaintiff complained about this discrimination to Defendant BRENTE, and to persons in the Human Resources Department. She complained, among other things, that denial of a promotion on her March 2017 anniversary date constituted discrimination for taking FMLA/CFRA leave. Plaintiff also pointed out that attorneys with less experience than her, who had not taken FMLA/CFRA leave, and who were performing substantially similar or even less complex and less demanding work, were being promoted to ranks of Deputy City Attorney IV, Step 10, or higher.

308. On June 12, 2017, Defendant BRENTE sent a memorandum to Human Resources, describing the essential job functions of deputy city attorneys working in the Police Litigation Unit (which is where Plaintiff had been assigned since June 2013). The essential job duties included functions which

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[19] Although EMPLOYER Defendants had authorized Plaintiff to work from home three hours per day from May 3, 2016 through May 14, 2016, Defendant BRENTE never assigned Plaintiff any work during this period. However, Plaintiff's secretary would call from time to time and advise Plaintiff of deadlines and due dates on Plaintiff's cases (which had not been re-assigned during Plaintiff's FMLA leave), and Plaintiff would prepare whatever documents or take whatever action was required to prevent the case from being compromised.

required a substantial amount of sitting (or standing) at a desk (although no time estimate was provided), and which also required traveling to court and to depositions, carrying, wheeling, lifting, and maneuvering boxes of trial documents, binders, and exhibits, "which are often voluminous." These essential job functions were not consistent with what the job had consisted of in the past, since support staff took boxes of trial documents, binders, and exhibits to court and back, and did the "carrying, wheeling, lifting, and maneuvering." (Since Plaintiff's secretary had retired in early 2017, and Plaintiff was not even assigned a new secretary, the only assistance she received came from the clerks.) This job description with additional "essential job duties" appears to have been designed to make Plaintiff unqualified for her job. This was done to discriminate against Plaintiff for having taken FMLA/CFRA leave in 2016.

309. On November 7, 2017, Defendant BRENTE issued a Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties she was having at work due to her physical disabilities, in discrimination for her taking FMLA/CFRA leave in 2016. (During a November 8, 2017 meeting to discuss the November 7, 2017 Notice to Correct Deficiencies, Plaintiff complained that she was being punished for taking FMLA/CFRA leave (among other things).)

310. Defendants also discriminated against Plaintiff for taking FMLA/CFRA leave from March 11, 2016 through June 5, 2016 by continuing (from April 2016 through the end of 2017) to fail and/or refuse to accommodate her physical disabilities. Among other things, Defendants discriminated against Plaintiff for taking FMLA/CFRA leave throughout 2016 and 2017, by failing and refusing to order and install the ergonomic items which were a necessity to Plaintiff, and for continuing to misrepresent and make false promises regarding the ordering and installation of the ergonomic items. Defendants also failed and refused to reasonably accommodate Plaintiff's reproductive and endocrine disabilities by refusing to accommodate her need to sleep up to 16 hours per night. Defendants could easily accommodated Plaintiff's disability by granting her permission to work from home, and/or allowing her a reduced work schedule, and/or allowing her a flexible work schedule. To this date, Defendants have failed to accommodate Plaintiff's physical disabilities.

311. Defendants also discriminated against Plaintiff for (among other things) taking FMLA/CFRA leave from March 11, 2016 through June 5, 2016 by continuing (from March 2016 through the end of 2017) to fail and/or refuse to promote Plaintiff.

B. Discrimination for January 21, 2018 through February 11, 2018 Intermittent FMLA/CFRA Leave (As Well as Prior FMLA/CFRA Leave)

312. Plaintiff took intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018.

313. Plaintiff worked from February 12, 2018 through February 27, 2018. During that time, Defendants continued to fail and refuse to accommodate Plaintiff's physical disabilities. This was due, in part, to Plaintiff taking FMLA/CFRA leave from January 21, 2018 through February 11, 2018.

314. On February 14, 2018, Plaintiff complained to EMPLOYER Defendants (specifically, to David Trujillo) that, among other things, Defendant BRENTE and EMPLOYER Defendants were harassing and discriminating against her because of taking FMLA/CFRA leave.

315. Defendants also discriminated against Plaintiff for taking FMLA/CFRA leave from January 21, 2018 through February 11, 2018 (and for taking prior FMLA/CFRA leave) by failing and/or refusing to accommodate Plaintiff's physical disabilities. Among other things, Defendants discriminated against Plaintiff for taking FMLA/CFRA leave by failing and refusing to order and install the ergonomic items which were a necessity to Plaintiff, and for continuing to misrepresent and make false promises regarding the ordering and installation of the ergonomic items. Defendants also failed and refused to reasonably accommodate Plaintiff's reproductive and endocrine disabilities by refusing to accommodate her need to sleep up to 16 hours per night. Defendants could easily have accommodated Plaintiff's disability by granting her permission to work from home, and/or allowing her a reduced work schedule, and/or allowing her a flexible work schedule. To this date, Defendants have failed to accommodate Plaintiff's physical disabilities.

316. Defendants also discriminated against Plaintiff for taking FMLA/CFRA leave from January 21, 2018 through February 11, 2018 by Defendant BRENTE failing and refusing to assign another attorney to cover Plaintiff's cases, so that deadlines and due dates were missed in some cases which were still assigned to Plaintiff.

317. Defendants also discriminated against Plaintiff for (among other things) taking FMLA/CFRA leave from January 21, 2018 through February 11, 2018 (and for taking prior FMLA/CFRA leave) by failing and/or refusing to promote Plaintiff. To this date, Defendants have failed and/or refused

to promote Plaintiff.

C. Discrimination for March 8, 2018 through April 9, 2018 FMLA/CFRA Leave (As Well as Prior FMLA/CFRA Leave)

318. Plaintiff took FMLA/CFRA leave from March 8, 2018 through April 9, 2018. Plaintiff had tried working from home as an accommodation for her disabilities but, on March 8, 2018, Defendant BRENTE sent Plaintiff an email in which he admonished her for not keeping up with her work while she was in excruciating pain and trying to work from home. Plaintiff therefore gave up trying to work part-time from home and, on March 12, 2018, notified Human Resources of her need to take FMLA/CFRA leave, beginning (retroactively) on March 8, 2018. The very next day (on March 13, 2018), her anniversary date step was denied/withheld for one year – something which is virtually unheard of. This denial/withholding of her anniversary date step (as well as Defendants' continuing failure/refusal to promote Plaintiff) was a direct result of her taking FMLA/CFRA leave in 2016, and again in 2018.

319. Defendants continued discriminating against Plaintiff for taking FMLA/CFRA leave by doing things such as failing and/or refusing to provide the reasonable accommodations Plaintiff required (and to which she was entitled) in order to return to work, misrepresenting the status of the ergonomic items to Plaintiff, and making false promises to Plaintiff regarding the ergonomic items. Defendants also failed and refused to reasonably accommodate Plaintiff's reproductive and endocrine disabilities by refusing to accommodate her need to sleep up to 16 hours per night. Defendants could easily have accommodated Plaintiff's disability by granting her permission to work from home, and/or allowing her a reduced work schedule, and/or allowing her a flexible work schedule. To this date, Defendants have failed to accommodate Plaintiff's physical disabilities.

320. In March 2018, Plaintiff again complained to EMPLOYER Defendants that she was being discriminated against for (among other things) taking FMLA/CFRA leave, by not having her disabilities reasonably accommodated, and instead being forced to exhaust the vacation and sick leave which she had worked for years to accrue. To this date, Defendants have failed to accommodate Plaintiff's physical disabilities.

321. Defendants also discriminated against Plaintiff for (among other things) taking FMLA/CFRA leave from March 8, 2018 through April 9, 2018 (and for taking prior FMLA/CFRA leave)

by failing and/or refusing to promote Plaintiff. To this date, Defendants have failed and/or refused to promote Plaintiff.

D. Discrimination for April 25, 2018 through June 9, 2018 FMLA/CFRA Leave

322. In April 2018, Plaintiff requested to take a FMLA/CFRA leave of absence, but months went by without her receiving a response. Finally, on September 21, 2018, Human Resources sent a letter stating that Plaintiff was being granted a "personal medical leave of absence . . . as a reasonable accommodation for the continuous period of April 25, 2018 through October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018.

323. On June 9, 2018, Plaintiff was removed from payroll and her health benefits were terminated without notice. Plaintiff received no notice of the termination of her removal from payroll or of the termination of her health insurance benefits from EMPLOYER Defendants. Rather, she learned of the termination of health benefits from one of her medical providers.

324. The only notice Plaintiff received from EMPLOYER Defendants concerning her removal from payroll and the termination of her health insurance came over a month later, on July 13, 2018, when David Trujillo sent Plaintiff an email in which he wrote:

> Your department has changed your status to Part Time Intermittent and that is what has cancelled your benefits.
>
> This status automatically cancels benefits by the payroll file provided to our TPA.

This removal of Plaintiff from payroll and termination of Plaintiff's health insurance (both done without notice) was due, in part, to Plaintiff taking FMLA/CFRA from January 21 through February 11, 2018, March 8 through April 9, 2018, and April 25 through June 9, 2018.

325. In November and December 2018 and January 2019, Plaintiff submitted numerous reports from U.S. HealthWorks to EMPLOYER Defendants and Defendant BRENTE regarding her neurological disability consisting of vertigo resulting from typhus, and of status as "temporarily partially disabled" because she was not allowed to drive. The result of Plaintiff submitting these reports was for David Trujillo and then Vivienne Swanigan to send letters stating that Plaintiff was "absent without leave," and threatening loss of Plaintiff's job. This was due, in part, to Plaintiff taking FMLA/CFRA from January 21 through February 11, 2018, March 8 through April 9, 2018, and April 25 through June 9, 2018.

326. On December 1, 2018, Plaintiff filed a workers' compensation claim with Defendant CITY ATTORNEY'S OFFICE for in typhus disease. On her workers' compensation complaint form, Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician phoned me and informed me I tested positive for typhus.
>
> Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

327. From November 2018 through January 2019, EMPLOYER Defendants refused to reasonably accommodate Plaintiff's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium (neurological disabilities which were caused by typhus). EMPLOYER Defendants have a legal duty to reasonably accommodate Plaintiff's commute-related limitations. This refusal to accommodate Plaintiff's disability of not being able to drive is due, in part, to Plaintiff taking FMLA/CFRA from January 21 through February 11, 2018, March 8 through April 9, 2018, and April 25 through June 9, 2018.

328. After contracting typhus, and after learning that the building where she worked – City Hall East – which is within two blocks of the "Typhus Zone" as designated by the County of Los Angeles – was not being fumigated even thought she had repeatedly requested that the building be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East. This refusal by EMPLOYER Defendants to fumigate City Hall East is due, in part, to Plaintiff taking FMLA/CFRA from January 21 through February 11, 2018, March 8 through April 9, 2018, and April 25 through June 9, 2018. On December 1, 2018, Plaintiff filed a workers' compensation claim with Defendant CITY ATTORNEY'S OFFICE for in typhus disease. On her workers' compensation complaint form, Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician

> phoned me and informed me I tested positive for typhus.
>
> Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

pp) During January and February 2019, U.S. HealthWorks continued designating Plaintiff temporarily partially disabled from December 20, 2018 through February 11, 2019.)

qq) Having obtained new accommodation from Defendants for her temporarily partial disability which has been caused by the typhus, and any indication that EMPLOYER Defendants had any plans to fumigate City Hall East, Plaintiff began speaking to the media. Plaintiff was interviewed by many television stations, radio stations, and newspapers as discussed in detail above.

rr) Plaintiff's first interview with media was her January 29, 2019 interview with Joel Grover of NBC 4 local news regarding her typhus. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover.

ss) The next day, on January 31, 2019, Defendants did the exact opposite thing from accommodating Plaintiff's disability. David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

329. Also on January 31, 2019, Plaintiff appeared on NBC Channel 4 News at 11:00 p.m. where she spoke about the typhus she had contracted while working at City Hall East.

330. As Plaintiff continued to speak out about the typhus investigation at City Hall for the next few weeks, and about the injuries she had endured, Defendants continued not only to fail to accommodate Plaintiff's disability, but also retaliated against Plaintiff.

331. On February 6, 2019 (only three workdays after EMPLOYER Defendants were served with

the Complaint in this matter, and within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her new work location at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

332. Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the typhus epidemic and about the fact that she contracted typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

333. The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

334. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been

"approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

335. Defendants continued discriminating against Plaintiff for taking FMLA/CFRA leave by doing things such as failing and/or refusing to provide the reasonable accommodations Plaintiff required (and to which she was entitled) in order to return to work, misrepresenting the status of the ergonomic items to Plaintiff, making false promises to Plaintiff regarding the ergonomic items, refusing to accommodate Plaintiff's need to sleep longer hours than the average person, refusing to accommodate Plaintiff's neurological disabilities relating to typhus, and even refusing to fumigate City Hall East. To this date, Defendants have failed to accommodate Plaintiff's physical disabilities.

336. Defendants also discriminated against Plaintiff for taking FMLA/CFRA leave by failing and refusing to pay her holiday and sick leave pay during 2019.

337. Defendants also continued to discriminated against Plaintiff for (among other things) taking FMLA/CFRA leave from April 25, 2018 through June 9, 2018 (and for taking prior FMLA/CFRA leave) by failing and/or refusing to promote Plaintiff. To this date, Defendants have failed and/or refused to promote Plaintiff.

E. The Resulting Damages

338. As a result of and substantially motivated by Plaintiff taking FMLA/CFRA leave, Defendants and each of them subjected Plaintiff to discriminatory treatment and/or adverse employment actions as described herein.

339. As a direct and legal result of Defendants' unlawful discrimination and related actions and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year

when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

340. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

341. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

342. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

343. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

NINTH CAUSE OF ACTION

INTERFERENCE IN VIOLATION OF

THE CALIFORNIA FAMILY RIGHTS ACT

[Including, specifically, Gov. Code § 12945.2(t), and 2 Cal. Code Regs. § 11094]

[Against EMPLOYER Defendants and DOE Defendants]

344. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

345. Pursuant to the California Family Rights Act, it " shall be an unlawful employment practice

for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section." [Gov. Code § 12945.2(t).]

A. Interference With March 11, 2016 through June 5, 2016 FMLA/CFRA Leave

346. Plaintiff took FMLA/CFRA leave from March 11, 2016 through June 5, 2016 related to her reproductive disabilities.

347. As discussed in detail above, Defendants (through Wanda Hudson) interfered with Plaintiff's FMLA/CFRA leave by removing her from payroll, effective May 2, 2016, while she was home recovering from surgery, and after she had received written assurances from Cristina Sarabia that her FMLA/CFRA leave was approved from March 8, 2016 "through a date not yet determined."

348. Defendants (through Wanda Hudson) interfered with Plaintiff's FMLA/CFRA leave by repeatedly demanding medical information which had already been provided, and by threatening Plaintiff that if she did not provide further medical details, she would be classified as "AWOL."

349. Defendants (through Defendant BRENTE) interfered with Plaintiff's FMLA/CFRA leave by failing and refusing to assign another attorney to cover Plaintiff's cases, so that deadlines and due dates were missed in some cases which were still assigned to Plaintiff, causing Plaintiff to work part-time from home without being paid, and to feel pressured to return to work.

B. Interference With January 21, 2018 through February 11, 2018 Intermittent FMLA/CFRA Leave

350. Plaintiff took intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018.

351. Defendant BRENTE interfered with Plaintiff taking this leave by failing to assign sufficient personnel to cover Plaintiff's cases, so that deadlines and due dates were missed in some cases which were still assigned to Plaintiff, causing Plaintiff to feel pressured to return to work.

C. Interference With March 8, 2018 through April 9, 2018 FMLA/CFRA Leave

352. Plaintiff took FMLA/CFRA leave from March 8, 2018 through April 9, 2018. Plaintiff was initially attempting to work from home to accommodate her disabilities, but on March 8, 2018, Defendant BRENTE sent Plaintiff an email in which he admonished her for not keeping up with her work while she was in excruciating pain and trying to work part-time from home. As a result, Plaintiff was forced to go

on FMLA/CFRA leave, from March 8, 2018 through April 9, 2018. During this time, Defendant BRENTE continued to fail to assign sufficient personnel to cover Plaintiff's cases, so that deadlines and due dates were missed in some cases which were still assigned to Plaintiff, causing Plaintiff to feel pressured to return to work.

D. Interference With April 25, 2018 through October 16, 2018 FMLA/CFRA Leave

353. Plaintiff took FMLA/CFRA leave from April 25, 2018 through October 16, 2018.

354. Defendants interfered with Plaintiff taking this leave first by terminating her health insurance effective June 9, 2018. Then, on July 13, 2018, David Trujillo sent her an email which said:

> Your department has changed your status to Part Time Intermittent and that is what has cancelled your benefits.
>
> This status automatically cancels benefits by the payroll file provided to our TPA.

Amazingly, although EMPLOYER Defendants had removed Plaintiff from payroll and terminated her health insurance benefits on June 9, 2018, they did not bother to tell Plaintiff until over a month later, on July 13, 2018. Defendants later changed Plaintiff's health insurance from Anthem to Kaiser without telling her, and then on January 1, 2017, once again terminated Plaintiff's health insurance without telling her.

355. Having her health insurance benefits terminated and then being taken off payroll caused Plaintiff to feel an enormous amount of pressure to return to work, and generally exacerbated Plaintiff's disabilities and injuries.

E. The Resulting Damages

356. Defendants and each of them interfered with Plaintiff's exercise of her rights pursuant to the CFRA.

357. As a direct and legal result of Defendants' unlawful interference and related actions and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

358. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

359. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

360. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

361. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

TENTH CAUSE OF ACTION

FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

[Including, specifically, Gov. Code § 12940(k)]

[Against EMPLOYER Defendants and DOE Defendants]

362. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

363. At all times herein mentioned, the FEHA (Gov. Code §§ 12900, *et seq.*) was in full force and effect and binding on Defendants. The FEHA states that it is unlawful "[f]or an employer . . . to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." [Gov. Code § 12940(k).]

364. During the entire time Plaintiff was employed with EMPLOYER Defendants and DOE Defendants, each of their respective agents, employees, directors, managers, and supervisors failed to take all reasonable steps to prevent harassment and discrimination, and created an environment where such discrimination and harassment was condoned, encouraged, tolerated, sanctioned, and ratified.

365. During the entire relevant period, EMPLOYER Defendants and DOE Defendants and their respective agents, employees, directors, managers, and supervisors violated Government Code section 12940(k) by, among other things, committing the following acts and failures to act:

a) Having no policies, practices, and procedures, and/or failing to implement policies, practices, and procedures, and/or having ineffective policies, practices, and procedures regarding Defendants' obligations to refrain from discrimination, harassment, and retaliation.

b) Failing to follow the policies, practices, and procedures which were in place.

c) Failing to investigate when discrimination, harassment, and retaliation were repeatedly reported by Plaintiff.

d) Failing to provide adequate training, education, and/or information to their personnel, and most particularly to management and supervisory personnel, regarding policies and procedures regarding preventing discrimination, harassment, and retaliation.

366. Defendants failed to take reasonable steps to prevent discrimination, harassment, and retaliation from being inflicted upon Plaintiff, resulting in Plaintiff being discriminated against, harassed, and retaliated against in violation of the FEHA. Even though Plaintiff repeatedly complained to Defendant BRENTE (Plaintiff's immediate supervisor at the time), and to numerous persons in the Human Resources Department and Personnel Department about discrimination, harassment, and retaliation which was occurring, Defendants failed to take appropriate action to prevent the discrimination, harassment, and retaliation.

367. As a result of and substantially motivated by Plaintiff's sex, physical disabilities, need for reasonable accommodations, and taking FMLA/CFRA leave, Defendants and each of them subjected Plaintiff to discriminatory, harassing, and/or retaliatory treatment and/or adverse employment actions as described herein.

368. It is particularly egregious that the unlawful discrimination and harassment of Plaintiff was

executed and/or directed by persons who were either licensed attorneys, or employees of the Human Resources/Personnel Department, or persons who fit both these categories. Some of the attorneys involved in the unlawful discrimination and harassment of Plaintiff were in very high positions with Defendant CITY ATTORNEY'S OFFICE (such as Vivienne Swanigan, Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division who actually denied that Defendant CITY ATTORNEY'S OFFICE had a duty to reasonably accommodate Plaintiff's disability of being unable to drive due to her severe vertigo). The unlawful actions in this case were **not** accidental, but were planned and executed by agents and/or employees of EMPLOYER Defendants who were well aware that the activities were unlawful.

369. As a direct and legal result of Defendants' unlawful discrimination, harassment, and related actions and omissions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of not being promoted year after year when she should have been, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants terminated her health insurance, all as a result of Defendants' unlawful actions.

370. As a direct and legal result of Defendants' unlawful acts and omissions, Plaintiff has also suffered and continues to suffer an exacerbation of her lumbar spine injury and her other physical injuries, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

371. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

372. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants

DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

373. As a direct result of Defendants' unlawful acts and omissions, Plaintiff has incurred and continues to incur attorneys' fees, expert witness fees, and costs in an amount to be proven, to which she is also entitled, pursuant to Government Code section 12965(b).

ELEVENTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF THE FIRST AMENDMENT

[Against EMPLOYER Defendants and DOE Defendants]

374. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

375. On December 20, 2018, when Plaintiff learned that Defendant CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the typhus outbreak, and the fact that she contracted typhus. Also on December 20, 2018, Cal/OSHA sent a letter to Defendant CITY ATTORNEY'S OFFICE, notifying it that a complaint had been filed and giving it five days to respond. Plaintiff has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

376. In early January 2019, Plaintiff contacted the Los Angeles County Vector Control District and advised them that she had contracted typhus while working at City Hall East.

377. On January 29, 2019, Plaintiff was interviewed by Joel Grover of NBC 4 local news regarding her typhus. Plaintiff spoke out about the rat and flea infestation at City Hall and City Hall East, and about the typhus contagion in downtown Los Angeles. Plaintiff described the agonizing pain she endured because of having contracted typhus and emphasized the importance of Defendant CITY and Defendant CITY ATTORNEY'S OFFICE taking immediate action to get rid of the typhus-carrying fleas. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover for comment.

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In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for her speaking to the media about contracting typhus at City Hall East and the safety issues which existed at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

379. Also on January 31, 2019, Plaintiff appeared on NBC Channel 4 News at 11:00 p.m. where she spoke about the typhus she had contracted while working at City Hall East, saying the things described in paragraph xx above.

380. On February 1, 2019, Plaintiff sent an email to David Trujillo, in reply to his January 31, 2019 email ordering her to report to work. In her email, Plaintiff stated, among other things:

> The conditions in City Hall East are a threat to the health of City employees and to the public health. The City Attorney's office has been contacted by CalOSHA about the threat to public health and has ignored their letter. From my understanding, the City Attorney has not even notified other departments that a City Attorney employee contracted typhus at City Hall East. No one has notified the Mayor's office.
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> The fact the City Attorney has known of this health threat since November 2018; known that a City employee has been diagnosed with typhus since December 2018; was contacted by Cal/OSHA December 20, 2018; has my medical records proving I have Typhus since January 10, 2019; and has done nothing about protecting the employees or the public entering the building is obscene. The City Attorney has not even notified others in the building that an employee was infected so they know of their exposure there or they can take precautions. I would also add that the rat problem at City Hall East is not new. This has been going on for years, and the City and the City Attorney's Office allowed the infestation to get so out of control that people are being exposed to a disease which is most often associated with devastating epidemics from the Middle Ages.
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> I have been employed by the City Attorney's Office for over 22 years, and am being treated like the trash which is lining the streets around City Hall East. I seriously doubt a male who is a 22-year deputy city attorney and

> contracted Typhus on the job would be treated as I have been and am being treated. I should not be surprised, though, as this discrimination on the basis of sex has been consistent behavior by the City Attorney's Office over the years.
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> I implore the City and the City Attorney's Office to protect the City employees, clients, co-counsel and opposing counsel, witnesses, contractors, and the public from this public health crisis you are allowing to continue.

381. On February 1, 2019. Plaintiff was featured in the *Daily Mail* in an article called "LA City Hall Official Is the Latest Struck by Typhus in the City's Raging Epidemic," where she again spoke out about the rat and flea investigation at City Hall and City Hall East, about the typhus contagion, and about the pain typhus had caused to her. The article reads, "Liz believes the rats that nestle in the building's trash were carrying fleas that transmitted the disease." Plaintiff was also quoted as saying, "There are enormous rats." The article further reads: "She has yet to go back to work, and is calling on the city to fumigate the building before she does 'because I thought I was going to die.'"

382. On February 4, 2019, Plaintiff was interviewed on John and Ken (KFI AM 640 Radio and Podcast) and she spoke at length about the typhus outbreak, about the fact that she had contracted typhus while working at City Hall East, and about the fact that Defendant CITY and Defendant CITY ATTORNEY'S OFFICE had refused to fumigate.

383. On or about February 5, 2019, Plaintiff told Oscar Winslow, President of the Los Angeles City Attorneys Association (LACAA), about her typhus diagnosis. Mr. Winslow was very surprised, since no one at Defendant CITY ATTORNEY'S OFFICE had told its employees anything about protecting themselves from typhus-carrying fleas. Something as simple as advising employees to wear boots would have provided them a small amount of protection.

384. On February 6, 2019 (within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her **new work location** at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, the flea-infestation at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

385. On February 7, 2019, Plaintiff appeared on the Channel 5 11:00 a.m. News, on the Channel 11 News at 1:00 p.m., and on John and Ken (on KFI AM 640 Radio and Podcast) at 3:00 p.m.

386. Also on February 7, 2019, Plaintiff was featured in an article in the *Los Angeles Times* titled " L.A. City Hall, overrun with rats, might remove all carpets amid typhus fears." This article discusses the rat infestation at City Hall and a proposition to remove all of the carpet from City Hall and the adjoining buildings. Plaintiff was featured in the article and was quoted as saying:

> I am actually terrified of entering the building again until they do something" and "that carpet is years old – and, more than likely, it has fleas and flea eggs in it" and "I would really like to see the building fumigated for both rats and fleas . . . I hope they don't wait.

387. Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the typhus epidemic and about the fact that she contracted typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

388. The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted)

assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

389. On Saturday, February 9, 2019, Plaintiff was mentioned in an article in the *Los Angeles Times* titled "L.A. officials target vermin at City Hall." On Sunday, February 10, 2019, Plaintiff was featured in an article on the front page of the "California" section titled, "She's 'the canary in the coal mine.'" Plaintiff's photograph was included, with a caption which read: "L.A. DEPUTY CITY ATTY. Elizabeth Greenwood said flea bites at City Hall gave her typhus. Her bosses didn't believe she had the disease, she said."

390. On February 11, 2019, Plaintiff once again went to U.S. HealthWorks, where she was once again designated as "temporarily partially disabled." Since Plaintiff was going to see the City-designated infectious disease specialist on February 14, the doctor at U.S. HealthWorks extended her disability period only through February 14, 2019. Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on February 11, 2019.

391. Also on February 11, 2019, Plaintiff sent David Trujillo a very long email, stating her objections to the demotion to the Pacific Office, Criminal Branch (handling misdemeanor arraignments at the LAX courthouse). Among other things, Plaintiff wrote:

> In early December 2018, I reported the typhus danger to Los Angeles County Health Department, Acute Communicable Disease Department. On December 20, 2018, I reported the typhus danger at City Hall East, and the City Attorney's refusal to take any action to protect its employees, to Cal/OSHA. In early January 2019, I reported the same health dangers the City Attorney was knowingly allowing to persist to Los Angeles County Vector Control District.
>
> I also filed a complaint with the Department of Fair Employment and Housing, which was served on the City Attorney's Office on January 17. Later in January, after the City Attorney's office continued to stonewall me over the public health issue it was allowing to persist, I started talking to NBC. I talked to Joel Grover about the failure of the City Attorney's Office to protect me and then for the past several months its employees (and the members of the public who visit City Hall and City Hall East) from typhus. We discussed at length the City Attorney's Office had known about this for months and had not even sent a department wide email warning employees about the danger they faced.
>
> The day after the City Attorney's administration received a call from Joel Grover regarding safety precautions taken after my diagnosis, on January 31, you sent me an email once again ordering me back to work "or else," despite the orders from U.S. HealthWorks – the City's own industrial medicine provider. You falsely stated "driving or operating heavy equipment" is not an essential function of my job. I replied to your email by my email dated

February 4. In case you do not recall the contents of my email, I stated:

> The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .
>
> How the City Attorney could knowingly expose its employees to this horrible bacteria is shocking to me. The fact it knowingly exposes the public, who enters the building every day to conduct business, is criminal. The fact that you, Vivienne Swanigan, and the City Attorney's office are retaliating against me for standing up for my legal rights and for speaking out and telling people the danger they face walking into that building is unconscionable. . . .
>
> My loud and repeated whistling to the Department of Fair Employment and Housing, the Los Angeles Superior Court, Cal/OSHA, the Los Angeles Vector Control District and the media has resulted not in the City Attorney's Office doing the right (and smart) thing, but instead in you (and Vivienne Swanigan) sending the February 6, 2019 email in which you advise me that I am being transferred to the airport courthouse, where I will be a misdemeanor line deputy doing misdemeanor arraignments. This is so obviously a demotion it constitutes unlawful retaliation under common law and several sections of the Labor Code. (My attorney is currently amending the lawsuit to include the latest acts against me.)

> The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .
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392. On February 13, 2019, Plaintiff filed a complaint with the U.S. Department of Occupational Safety and Health Administration (Federal OSHA) alleging retaliation for filing a complaint with Cal/OSHA regarding safety and health hazards at her workplace.

393. On February 14, 2019, Plaintiff saw infectious disease specialist Richard T. Sokolov, M.D. (another City-designated doctor). Dr. Sokolov directed that Plaintiff be off work for the next three weeks. Dr. Sokolov told Plaintiff that since she was still suffering from vertigo, her brain had not recovered from the typhus, so she should not be working. Dr. Sokolov also stated it was his professional opinion that Plaintiff had contracted the typhus while working at City Hall East.

394. Also on February 14, 2019, Plaintiff sent another very long email to David Trujillo. Among other things, Plaintiff wrote:

> I object to the term "Personal Medical Leave" since this is leave which is necessary because of an on-the-job injury, and for which I have filed a workers' comp claim. I am also confused regarding what this means. It is not clear to me whether the medical leave is intended to be from now until the City Attorney's Office comes up with an appropriate reasonable accommodation, or whether it is only for Monday, Wednesday, and Thursday of this week. That question is probably not that important now, though, because today I saw the infectious disease doctor Richard Sokolov, M.D. (who U.S. HealthWorks referred me to and will be my industrial injury treating physician), and he put me off work for three weeks, effective today. A copy of Dr. Sokolov's prescription placing me off work is attached to this email.
>
> I cannot tell you how disappointing it is to see the level of indifference the City Attorney's office has shown to me, to the safety of the employees who work in City Hall East, and to the health of the members of the public forced to come to the building to conduct their business with the City. This office has been on notice of my illness since November 27, 2018. Their failure to act, their failure to even notify people of the danger they face walking into the building is grossly negligent and a complete abdication of the public trust.

395. On both Saturday, February 16, and Sunday, February 17, Plaintiff was again mentioned in articles in the *Los Angeles Times* regarding the typhus epidemic and the rat and flea infestation at City Hall and City Hall East.

396. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March

7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

397. Later on February 22, 2019, Plaintiff sent an email to David Trujillo in which she wrote:

> I received your letter granting personal medical leave until March 7, 2019, due to my recovering from the typhus I contracted at work. My next doctor's appointment is March 14, 2019, so I am unsure how you wish for me to go to work, or to where you expect me to report prior to my next doctor's appointment. I will not have a medical release before that appointment.
>
> I have still not received a phone call from anyone at the City Attorney's office inquiring about my health. I mention that because it is shockingly rude and insensitive. Nor have I received any communication whatsoever that resembles a conversation about what would be a reasonable accommodation after management let the health and cleanliness conditions in City Hall East reach the point that I almost died. I have only received orders to show up at different work sites for different jobs.
>
> Our last communication involved my unilateral and involuntarily transfer. I called my association for assistance because involuntary transfers involve the MOU, and in my case also violate Whistleblower statutes. Someone told Oscar Winslow, the Association President, that I requested the transfer. I did not. That was a lie. I asked you with which supervisor I should begin the grievance process. You replied characterizing my response as a refusal of your reasonable accommodation but never answered my question about which supervisor I should contact.
>
> Based on your response I incorrectly assumed that transfer was not going to happen. Julie San Juan was included in today's email, but not Cory Brente. Should I assume the office is continuing with the illegal unilateral involuntary transfer?
>
> I look forward to your rapid response.

398. David Trujillo responded (on February 22) that the transfer to the Pacific Office, Criminal Branch was "no longer happening," although he gave no indication regarding whether anything *would* be happening. EMPLOYER Defendants haves still not accommodated Plaintiff's disabilities, however. EMPLOYER Defendants have not fumigated City Hall or City Hall East. They have not even removed the carpeting. EMPLOYER Defendants have also not increased the custodial crews, and have not provided employees and visitors to the building with any type of protective clothing they could wear.

399. As of this date, Plaintiff has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated.

400. Plaintiff has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. (The Los Angeles Police Department buildings have been fumigated on about October 10, October 26, and December 14, 2018.) Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East or to allow Plaintiff to do her job in the Police Litigation Unit somewhere other than downtown.

401. Plaintiff's most recent medical leave expired March 7, 2019. She has been unable to see Dr. Sokolov again to either have her leave extended or be cleared to return to work, because her workers' compensation claim had been closed, either by Defendant CITY or by its workers' compensation administrator, Elite Claims.

402. Plaintiff is a citizen of the United States of America, and an employee of the City of Los Angeles. Every time Plaintiff complained about EMPLOYER Defendants' actions regarding the typhus outbreak – whether on television, on the radio, in newspaper, or in person, retaliatory action which was sufficient to deter a person of ordinary firmness from exercising her constitution rights was the result.

403. There is clearly a causal link between the constitutionally protected conduct in which Plaintiff engaged, and the retaliatory action which was taken against her almost immediately thereafter.

404. As a direct and legal result of Defendants' unlawful actions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants (once again) terminated her health insurance, all as a result of Defendants' unlawful actions. Plaintiff has also suffered irreparable harm to her career by being forced into this situation where she was required to speak out regarding the unsafe working conditions at the offices occupied by Defendant CITY

ATTORNEY'S OFFICE.

405. As a direct and legal result of Defendants' unlawful actions, Plaintiff has also suffered and continues to suffer an exacerbation of her typhus symptoms, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

406. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

407. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

408. As a direct result of Defendants' discriminatory acts, Plaintiff has incurred and continues to incur costs in an amount to be proven, to which she is also entitled, as provided by law.

TWELFTH CAUSE OF ACTION

WHISTLEBLOWING –

COMMON LAW RETALIATION IN VIOLATION OF PUBLIC POLICY

[Against EMPLOYER Defendants and DOE Defendants]

409. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

410. Under California law, no employee, whether at-will or under contract, can be retaliated against for a reason that is in violation of a fundamental public policy. California courts have interpreted a fundamental public policy to be any particular constitutional or statutory provision or regulation that is concerned with a manner affecting society at large rather than a purely personal or proprietary interest of the employee or employer.

411. During Plaintiff's employment with EMPLOYER Defendants, it was a fundamental, substantial, and well-established public policy that "[e]very employer shall furnish . . . a place of employment that is safe and healthful for the employees therein." [Lab. Code § 6400.] Additionally, "No employer shall occupy or maintain any place of employment that is not safe and healthful." [Lab. Code § 6404.] Also, "Every person possessing a place that is infested with rodents, as soon as their presence comes to his or her knowledge, shall at once proceed and continue in good faith to endeavor to exterminate and destroy the rodents, by poisoning, trapping, and other appropriate means, and to abate the conditions listed in Section 17920.3 that are causing the infestation." [Health & Saf. Code § 116125.]

412. At the time EMPLOYER Defendants retaliated against Plaintiff, it was also the public policy of the State of California, as set forth in Labor Code section 1102.5(b), that an employer may not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

413. Plaintiff was an employee of EMPLOYER Defendants. Plaintiff had a reasonably-based suspicion that EMPLOYER Defendants were requiring employees to work in a facility which was invested by rats which had fleas which carried the typhus virus since Plaintiff herself had contracted the typhus virus while working at City Hall East. Plaintiff therefore repeatedly complained about the conditions which she believed were unsafe and illegal.

414. On December 20, 2018, when Plaintiff learned that Defendant CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the typhus outbreak, and the fact that she contracted typhus. Also on December 20, 2018, Cal/OSHA sent a letter to Defendant CITY ATTORNEY'S OFFICE, notifying it that a complaint had been filed and giving it five days to respond.

Plaintiff has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

415. In early January 2019, Plaintiff contacted the Los Angeles County Vector Control District and advised them that she had contracted typhus while working at City Hall East.

416. On January 10, 2019 and again on January 22, 2019, Plaintiff (through her attorney) complained to Vivienne Swanigan about the flea and rat infestation at City Hall East which had caused Plaintiff to contract typhus, and demanded that City Hall East be fumigated or Cal/OSHA indicated the building was safe for employees to work there.

417. On January 29, 2019, Plaintiff was interviewed by Joel Grover of NBC 4 local news regarding her typhus. Plaintiff spoke out about the rat and flea infestation at City Hall and City Hall East, and about the typhus contagion in downtown Los Angeles. Plaintiff described the agonizing pain she endured because of having contracted typhus and emphasized the importance of Defendant CITY and Defendant CITY ATTORNEY'S OFFICE taking immediate action to get rid of the typhus-carrying fleas. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover for comment.

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> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

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> The fact the City Attorney has known of this health threat since November 2018; known that a City employee has been diagnosed with typhus since December 2018; was contacted by Cal/OSHA December 20, 2018; has my medical records proving I have Typhus since January 10, 2019; and has done nothing about protecting the employees or the public entering the building is obscene. The City Attorney has not even notified others in the building that an employee was infected so they know of their exposure there or they can take precautions. I would also add that the rat problem at City Hall East is not new. This has been going on for years, and the City and the City Attorney's Office allowed the infestation to get so out of control that people are being exposed to a disease which is most often associated with devastating epidemics from the Middle Ages.
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>
> I implore the City and the City Attorney's Office to protect the City employees, clients, co-counsel and opposing counsel, witnesses, contractors, and the public from this public health crisis you are allowing to continue.

421. On February 1, 2019. Plaintiff was featured in the *Daily Mail* in an article called "LA City Hall Official Is the Latest Struck by Typhus in the City's Raging Epidemic," where she again spoke out about the rat and flea investigation at City Hall and City Hall East, about the typhus contagion, and about the pain typhus had caused to her. The article reads, "Liz believes the rats that nestle in the building's trash were carrying fleas that transmitted the disease." Plaintiff was also quoted as saying, "There are enormous rats." The article further reads: "She has yet to go back to work, and is calling on the city to fumigate the building before she does 'because I thought I was going to die.'"

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423. On or about February 5, 2019, Plaintiff told Oscar Winslow, President of the Los Angeles City Attorneys Association (LACAA), about her typhus diagnosis. Mr. Winslow was very surprised, since no one at Defendant CITY ATTORNEY'S OFFICE had told its employees anything about protecting themselves from typhus-carrying fleas. Something as simple as advising employees to wear boots would have provided them a small amount of protection.

424. On February 6, 2019 (within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her **new work location** at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, the flea-infestation at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

425. On February 7, 2019, Plaintiff appeared on the Channel 5 11:00 a.m. News, on the Channel

11 News at 1:00 p.m., and on John and Ken (on KFI AM 640 Radio and Podcast) at 3:00 p.m.

426. Also on February 7, 2019, Plaintiff was featured in an article in the *Los Angeles Times* titled " L.A. City Hall, overrun with rats, might remove all carpets amid typhus fears." This article discusses the rat infestation at City Hall and a proposition to remove all of the carpet from City Hall and the adjoining buildings. Plaintiff was featured in the article and was quoted as saying:

> I am actually terrified of entering the building again until they do something" and "that carpet is years old – and, more than likely, it has fleas and flea eggs in it" and "I would really like to see the building fumigated for both rats and fleas . . . I hope they don't wait.

427. Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the typhus epidemic and about the fact that she contracted typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

428. The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

429. On Saturday, February 9, 2019, Plaintiff was mentioned in an article in the *Los Angeles Times* titled "L.A. officials target vermin at City Hall." On Sunday, February 10, 2019, Plaintiff was featured in an article on the front page of the "California" section titled, "She's 'the canary in the coal mine.'" Plaintiff's photograph was included, with a caption which read: "L.A. DEPUTY CITY ATTY. Elizabeth Greenwood said flea bites at City Hall gave her typhus. Her bosses didn't believe she had the disease, she said."

430. On February 11, 2019, Plaintiff once again went to U.S. HealthWorks, where she was once again designated as "temporarily partially disabled." Since Plaintiff was going to see the City-designated infectious disease specialist on February 14, the doctor at U.S. HealthWorks extended her disability period only through February 14, 2019. Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on February 11, 2019.

431. Also on February 11, 2019, Plaintiff sent David Trujillo a very long email, stating her objections to the demotion to the Pacific Office, Criminal Branch (handling misdemeanor arraignments at the LAX courthouse). Among other things, Plaintiff wrote:

> In early December 2018, I reported the typhus danger to Los Angeles County Health Department, Acute Communicable Disease Department. On December 20, 2018, I reported the typhus danger at City Hall East, and the City Attorney's refusal to take any action to protect its employees, to Cal/OSHA. In early January 2019, I reported the same health dangers the City Attorney was knowingly allowing to persist to Los Angeles County Vector Control District.
>
> I also filed a complaint with the Department of Fair Employment and Housing, which was served on the City Attorney's Office on January 17. Later in January, after the City Attorney's office continued to stonewall me over the public health issue it was allowing to persist, I started talking to NBC. I talked to Joel Grover about the failure of the City Attorney's Office to protect me and then for the past several months its employees (and the members of the public who visit City Hall and City Hall East) from typhus. We discussed at length the City Attorney's Office had known about this for months and had not even sent a department wide email warning employees about the danger they faced.
>
> The day after the City Attorney's administration received a call from Joel Grover regarding safety precautions taken after my diagnosis, on January 31, you sent me an email once again ordering me back to work "or else," despite the orders from U.S. HealthWorks – the City's own industrial medicine provider. You falsely stated "driving or operating heavy equipment" is not an essential function of my job. I replied to your email by my email dated February 4. In case you do not recall the contents of my email, I stated:
>
> The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .
>
> How the City Attorney could knowingly expose its employees to this horrible bacteria is shocking to me. The fact it knowingly exposes the public, who enters the building every day to conduct business, is criminal. The fact that you, Vivienne Swanigan, and the City Attorney's office are retaliating against me for standing up for my legal rights and for speaking out and telling people the danger they face walking into that building is unconscionable. . . .
>
> My loud and repeated whistling to the Department of Fair Employment and Housing, the Los Angeles Superior Court, Cal/OSHA, the Los Angeles Vector Control District and the media has resulted not in the City Attorney's Office doing the right (and smart) thing, but instead in you (and Vivienne Swanigan) sending the February 6, 2019 email in which you advise me that I am being transferred to the airport courthouse, where I will be a

> misdemeanor line deputy doing misdemeanor arraignments. This is so obviously a demotion it constitutes unlawful retaliation under common law and several sections of the Labor Code. (My attorney is currently amending the lawsuit to include the latest acts against me.)
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> The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .
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432. On February 13, 2019, Plaintiff filed a complaint with the U.S. Department of Occupational Safety and Health Administration (Federal OSHA) alleging retaliation for filing a complaint with Cal/OSHA regarding safety and health hazards at her workplace.

433. On February 14, 2019, Plaintiff saw infectious disease specialist Richard T. Sokolov, M.D. (another City-designated doctor). Dr. Sokolov directed that Plaintiff be off work for the next three weeks. Dr. Sokolov told Plaintiff that since she was still suffering from vertigo, her brain had not recovered from the typhus, so she should not be working. Dr. Sokolov also stated it was his professional opinion that Plaintiff had contracted the typhus while working at City Hall East.

434. Also on February 14, 2019, Plaintiff sent another very long email to David Trujillo. Among other things, Plaintiff wrote:

> I object to the term "Personal Medical Leave" since this is leave which is necessary because of an on-the-job injury, and for which I have filed a workers' comp claim. I am also confused regarding what this means. It is

> not clear to me whether the medical leave is intended to be from now until the City Attorney's Office comes up with an appropriate reasonable accommodation, or whether it is only for Monday, Wednesday, and Thursday of this week. That question is probably not that important now, though, because today I saw the infectious disease doctor Richard Sokolov, M.D. (who U.S. HealthWorks referred me to and will be my industrial injury treating physician), and he put me off work for three weeks, effective today. A copy of Dr. Sokolov's prescription placing me off work is attached to this email.
>
> I cannot tell you how disappointing it is to see the level of indifference the City Attorney's office has shown to me, to the safety of the employees who work in City Hall East, and to the health of the members of the public forced to come to the building to conduct their business with the City. This office has been on notice of my illness since November 27, 2018. Their failure to act, their failure to even notify people of the danger they face walking into the building is grossly negligent and a complete abdication of the public trust.

435. On both Saturday, February 16, and Sunday, February 17, Plaintiff was again mentioned in articles in the *Los Angeles Times* regarding the typhus epidemic and the rat and flea infestation at City Hall and City Hall East.

436. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

437. Later on February 22, 2019, Plaintiff sent an email to David Trujillo in which she wrote:

> I received your letter granting personal medical leave until March 7, 2019, due to my recovering from the typhus I contracted at work. My next doctor's appointment is March 14, 2019, so I am unsure how you wish for me to go to work, or to where you expect me to report prior to my next doctor's appointment. I will not have a medical release before that appointment.
>
> I have still not received a phone call from anyone at the City Attorney's office inquiring about my health. I mention that because it is shockingly rude and insensitive. Nor have I received any communication whatsoever that resembles a conversation about what would be a reasonable accommodation

> after management let the health and cleanliness conditions in City Hall East reach the point that I almost died. I have only received orders to show up at different work sites for different jobs.
>
> Our last communication involved my unilateral and involuntarily transfer. I called my association for assistance because involuntary transfers involve the MOU, and in my case also violate Whistleblower statutes. Someone told Oscar Winslow, the Association President, that I requested the transfer. I did not. That was a lie. I asked you with which supervisor I should begin the grievance process. You replied characterizing my response as a refusal of your reasonable accommodation but never answered my question about which supervisor I should contact.
>
> Based on your response I incorrectly assumed that transfer was not going to happen. Julie San Juan was included in today's email, but not Cory Brente. Should I assume the office is continuing with the illegal unilateral involuntary transfer?
>
> I look forward to your rapid response.

438. David Trujillo responded (on February 22) that the transfer to the Pacific Office, Criminal Branch was "no longer happening," although he gave no indication regarding whether anything *would* be happening. EMPLOYER Defendants haves still not accommodated Plaintiff's disabilities, however. EMPLOYER Defendants have not fumigated City Hall or City Hall East. They have not even removed the carpeting. EMPLOYER Defendants have also not increased the custodial crews, and have not provided employees and visitors to the building with any type of protective clothing they could wear.

439. As of this date, Plaintiff has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated.

440. Plaintiff has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. (The Los Angeles Police Department buildings have been fumigated on about October 10, October 26, and December 14, 2018.) Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East or to allow Plaintiff to do her job in the Police Litigation Unit somewhere other than downtown.

441. Plaintiff's most recent medical leave expired March 7, 2019. She has been unable to see Dr. Sokolov again to either have her leave extended or be cleared to return to work, because her workers'

compensation claim had been closed, either by Defendant CITY or by its workers' compensation administrator, Elite Claims.

442. There is clearly a causal link between Plaintiff's complaints of unsafe conditions and the adverse employment actions which were taken against her by Defendant CITY and Defendant CITY ATTORNEY'S OFFICE almost immediately thereafter. Among other things, Defendant CITY and Defendant CITY ATTORNEY'S OFFICE (on January 31, 2019) ordered Plaintiff to return to work right after Plaintiff was interviewed by Joel Grover of NBC 4 local news, and then (on February 6, 2019), within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East, demoting Plaintiff from being a Deputy City Attorney who was defending Defendant CITY in million-dollar cases against the Los Angeles Police Department and its employees (mostly brought in federal court), to an attorney assigned to handle misdemeanor arraignments at the LAX courthouse – an entry-level assignment which she had performed over 20 years earlier.

443. As a direct and legal result of Defendants' unlawful actions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants (once again) terminated her health insurance, all as a result of Defendants' unlawful actions. Plaintiff has also suffered irreparable harm to her career by being forced into this situation where she was required to speak out regarding the unsafe working conditions at the offices occupied by Defendant CITY ATTORNEY'S OFFICE.

444. As a direct and legal result of Defendants' unlawful actions, Plaintiff has also suffered and continues to suffer an exacerbation of her typhus symptoms, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

445. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs,

prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

446. The aforementioned acts by DOE Defendants were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against Defendants DOES 1 through 10 (who are **not** public entities) in an amount to be determined at the time of trial.

447. As a direct result of Defendants' retaliatory acts, Plaintiff has incurred and continues to incur costs in an amount to be proven, to which she is also entitled, as provided by law.

THIRTEENTH CAUSE OF ACTION

WHISTLEBLOWING –

RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5

[Against EMPLOYER Defendants and DOE Defendants]

448. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

449. This cause of action is brought pursuant to Labor Code section 1102.5. At all times relevant herein, EMPLOYER Defendants have been employers pursuant to Industrial Welfare Commission Wage Order 4-2001, § 2(H) and Labor Code section 1102.5. Plaintiff is and was an employee of EMPLOYER Defendants.

450. Labor Code section 1102.5 prohibits employers from retaliating against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

451. On Thursday, November 1, 2018, Plaintiff became extremely ill, with a very high fever, and

was diagnosed as probable Viral Meningitis. Plaintiff's physician (Terry Ishihara, M.D.) wanted to admit Plaintiff to the hospital, but she Declined to go because of being without health insurance. Plaintiff could not even have blood tests performed because of the lack of health insurance. Dr. Ishihara advised Plaintiff that she would need to stay in bed for at least a week, and probably longer. On November 1, 2018, Plaintiff advised both Defendant BRENTE and HR Analyst David Trujillo that she was sick, that she probably had Viral Meningitis, and that her doctor had advised at least a week of bed rest.

452. On Monday, November 5, 2018, persons from the Police Litigation Unit started emailing Plaintiff assignments to do at home. Not only was Plaintiff very ill, but she did not have any of the files she would need in order to do the work she was being assigned anyway. Plaintiff notified both the Police Litigation Unit and David Trujillo of these facts.

453. On November 8, 2018, Plaintiff learned that her health insurance had been reactivated.[20] Plaintiff was still very ill at this time. Her fever was not as high as previously, but she was still suffering from fever, headaches, chills, and severe vertigo. On November 20, Plaintiff's physician said it could take up to two weeks for her to recover from what, at that point, had been diagnosed as Viral Meningitis. Plaintiff's physician provided her with a note stating she could not return to work until December 3, 2018.

454. While Plaintiff was at the doctor on November 20, she had blood drawn for the purpose of testing for typhus. On November 27, 2018, Plaintiff learned she had typhus (specifically, typhus fever Group IgG, IgM). Typhus is a very serious disease, which can be fatal if left untreated. Typhus can cause Viral Meningitis. Although typhus is highly treatable with antibiotics, Plaintiff could not go to the hospital or even have blood tests until almost three weeks after her symptoms started, because her health insurance had not yet been re-activated (even though she was eligible for re-activation starting October 27, 2018).

455. Plaintiff most likely contracted typhus while working for EMPLOYER Defendants. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los Angeles. There has been a typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus

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[20]Plaintiff was eligible for health insurance starting October 27, 2018, but despite Plaintiff urging EMPLOYER Defendants to hurry and get her insurance re-activated, Plaintiff's health insurance was not actually re-activated until November 8, 2018.

Zone." Plaintiff's office is only two blocks outside the Typhus Zone.

456. On November 29, 2018, Plaintiff sent an email to Defendant BRENTE, copied to David Trujillo, in which she wrote:

> Given the fact there is a typhus outbreak in Downtown LA I would like to file a workers' compensation claim. Would you please send me the paperwork.
>
> Thank you very much.

David Trujillo replied that he would have "Nancy send over the paperwork." Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE, relating to her typhus diagnosis, on December 1, 2018. In that document, Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician phoned me and informed me I tested positive for typhus.

Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

457. Plaintiff did not return to work on December 3, 2018, however, because she was on a planned family vacation through December 10, 2018 plus, as it turned out, she was still ill from the typhus the entire time, so she spent most of the vacation in bed, with intermittent fevers and with severe headaches. Plaintiff planned to return to work on December 11, 2018, but was unable to return for two reasons: 1) She was still suffering from severe vertigo, dizziness, and disequilibrium which are symptoms of typhus; and 2) She feared contracting typhus again, since her office is within two blocks of the Typhus Zone. (Typhus can be contracted repeatedly, and since Plaintiff has an auto-immune disorder, she is at increased risk for contracting typhus. In California, an employee is not required to work under hazardous working conditions which present a serious risk of harm.) Although EMPLOYER Defendants had indicated they had sprayed pesticide in Plaintiff's personal office, the rest of the building had not been fumigated, so Plaintiff would still not be protected from typhus-carrying fleas.

458. Plaintiff most likely contracted typhus while working for EMPLOYER Defendants. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los

Angeles. There has been a typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus Zone." Plaintiff's office is only two blocks outside the Typhus Zone.

459. On November 29, 2018, Plaintiff sent an email to Defendant BRENTE, copied to David Trujillo, in which she wrote:

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Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

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461. On December 9, 2018, Plaintiff learned that her health insurance had been changed from Anthem, to Kaiser Permanente, without anyone even giving her any notice of this change. (Plaintiff found out when she attempted to get a prescription refilled at the pharmacy.)

462. On December 20, 2018, when Plaintiff learned that Defendant CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the typhus outbreak, and the fact that she contracted typhus. Also on December 20, 2018, Cal/OSHA sent a letter to Defendant CITY ATTORNEY'S OFFICE, notifying it that a complaint had been filed and giving it five days to respond. Plaintiff has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

463. In early January 2019, Plaintiff contacted the Los Angeles County Vector Control District and advised them that she had contracted typhus while working at City Hall East.

464. On January 10, 2019 and again on January 22, 2019, Plaintiff (through her attorney) complained to Vivienne Swanigan about the flea and rat infestation at City Hall East which had caused Plaintiff to contract typhus, and demanded that City Hall East be fumigated or Cal/OSHA indicated the building was safe for employees to work there.

465. On January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, **and that Plaintiff was expected to report for work on Monday, February 4, 2019**. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for reporting to Cal/OSHA, Los Angeles County Vector Control District , and Vivienne Swanigan about contracting typhus at City Hall East and about the safety

issues which existed at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

466. On February 1, 2019, Plaintiff sent an email to David Trujillo, in reply to his January 31, 2019 email ordering her to report to work. In her email, Plaintiff stated, among other things:

> The conditions in City Hall East are a threat to the health of City employees and to the public health. The City Attorney's office has been contacted by CalOSHA about the threat to public health and has ignored their letter. From my understanding, the City Attorney has not even notified other departments that a City Attorney employee contracted typhus at City Hall East. No one has notified the Mayor's office.
>
> The fact the City Attorney has known of this health threat since November 2018; known that a City employee has been diagnosed with typhus since December 2018; was contacted by Cal/OSHA December 20, 2018; has my medical records proving I have Typhus since January 10, 2019; and has done nothing about protecting the employees or the public entering the building is obscene. The City Attorney has not even notified others in the building that an employee was infected so they know of their exposure there or they can take precautions. I would also add that the rat problem at City Hall East is not new. This has been going on for years, and the City and the City Attorney's Office allowed the infestation to get so out of control that people are being exposed to a disease which is most often associated with devastating epidemics from the Middle Ages.
>
> I have been employed by the City Attorney's Office for over 22 years, and am being treated like the trash which is lining the streets around City Hall East. I seriously doubt a male who is a 22-year deputy city attorney and contracted Typhus on the job would be treated as I have been and am being treated. I should not be surprised, though, as this discrimination on the basis of sex has been consistent behavior by the City Attorney's Office over the years.
>
> I implore the City and the City Attorney's Office to protect the City employees, clients, co-counsel and opposing counsel, witnesses, contractors, and the public from this public health crisis you are allowing to continue.

467. On or about February 5, 2019, Plaintiff told Oscar Winslow, President of the Los Angeles City Attorneys Association (LACAA), about her typhus diagnosis. Mr. Winslow was very surprised, since no one at Defendant CITY ATTORNEY'S OFFICE had told its employees anything about protecting themselves from typhus-carrying fleas. Something as simple as advising employees to wear boots would have provided them a small amount of protection.

468. On February 6, 2019 David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her **new work location** at the Pacific Office,

Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, the flea-infestation at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

469. On February 8, 2019, knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

470. On February 11, 2019, Plaintiff once again went to U.S. HealthWorks, where she was once again designated as "temporarily partially disabled." Since Plaintiff was going to see the City-designated infectious disease specialist on February 14, the doctor at U.S. HealthWorks extended her disability period only through February 14, 2019. Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on February 11, 2019.

471. Also on February 11, 2019, Plaintiff sent David Trujillo a very long email, stating her objections to the demotion to the Pacific Office, Criminal Branch (handling misdemeanor arraignments at the LAX courthouse). Among other things, Plaintiff wrote:

In early December 2018, I reported the typhus danger to Los Angeles County Health Department, Acute Communicable Disease Department. On December 20, 2018, I reported the typhus danger at City Hall East, and the City Attorney's refusal to take any action to protect its employees, to Cal/OSHA. In early January 2019, I reported the same health dangers the City Attorney was knowingly allowing to persist to Los Angeles County Vector Control District.

I also filed a complaint with the Department of Fair Employment and Housing, which was served on the City Attorney's Office on January 17. Later in January, after the City Attorney's office continued to stonewall me over the public health issue it was allowing to persist, I started talking to NBC. I talked to Joel Grover about the failure of the City Attorney's Office to protect me and then for the past several months its employees (and the members of the public who visit City Hall and City Hall East) from typhus. We discussed at length the City Attorney's Office had known about this for months and had not even sent a department wide email warning employees about the danger they faced.

The day after the City Attorney's administration received a call from Joel Grover regarding safety precautions taken after my diagnosis, on January 31, you sent me an email once again ordering me back to work "or else," despite the orders from U.S. HealthWorks – the City's own industrial medicine provider. You falsely stated "driving or operating heavy equipment" is not an essential function of my job. I replied to your email by my email dated February 4. In case you do not recall the contents of my email, I stated:

The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .

How the City Attorney could knowingly expose its employees to this horrible bacteria is shocking to me. The fact it knowingly exposes the public, who enters the building every day to conduct business, is criminal. The fact that you, Vivienne Swanigan, and the City Attorney's office are retaliating against me for standing up for my legal rights and for speaking out and telling people the danger they face walking into that building is unconscionable. . . .

My loud and repeated whistling to the Department of Fair Employment and Housing, the Los Angeles Superior Court, Cal/OSHA, the Los Angeles Vector Control District and the media has resulted not in the City Attorney's Office doing the right (and smart) thing, but instead in you (and Vivienne Swanigan) sending the February 6, 2019 email in which you advise me that I am being transferred to the airport courthouse, where I will be a misdemeanor line deputy doing misdemeanor arraignments. This is so obviously a demotion it constitutes unlawful retaliation under common law and several sections of the Labor Code. (My attorney is currently amending the lawsuit to include the latest acts against me.)

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472. On February 13, 2019, Plaintiff filed a complaint with the U.S. Department of Occupational Safety and Health Administration (Federal OSHA) alleging retaliation for filing a complaint with Cal/OSHA regarding safety and health hazards at her workplace.

473. On February 14, 2019, Plaintiff saw infectious disease specialist Richard T. Sokolov, M.D. (another City-designated doctor). Dr. Sokolov directed that Plaintiff be off work for the next three weeks. Dr. Sokolov told Plaintiff that since she was still suffering from vertigo, her brain had not recovered from the typhus, so she should not be working. Dr. Sokolov also stated it was his professional opinion that Plaintiff had contracted the typhus while working at City Hall East.

474. Also on February 14, 2019, Plaintiff sent another very long email to David Trujillo. Among other things, Plaintiff wrote:

> I object to the term "Personal Medical Leave" since this is leave which is necessary because of an on-the-job injury, and for which I have filed a workers' comp claim. I am also confused regarding what this means. It is not clear to me whether the medical leave is intended to be from now until the City Attorney's Office comes up with an appropriate reasonable accommodation, or whether it is only for Monday, Wednesday, and Thursday of this week. That question is probably not that important now, though, because today I saw the infectious disease doctor Richard Sokolov,

> M.D. (who U.S. HealthWorks referred me to and will be my industrial injury treating physician), and he put me off work for three weeks, effective today. A copy of Dr. Sokolov's prescription placing me off work is attached to this email.
>
> I cannot tell you how disappointing it is to see the level of indifference the City Attorney's office has shown to me, to the safety of the employees who work in City Hall East, and to the health of the members of the public forced to come to the building to conduct their business with the City. This office has been on notice of my illness since November 27, 2018. Their failure to act, their failure to even notify people of the danger they face walking into the building is grossly negligent and a complete abdication of the public trust.

475. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

476. Later on February 22, 2019, Plaintiff sent an email to David Trujillo in which she wrote:

> I received your letter granting personal medical leave until March 7, 2019, due to my recovering from the typhus I contracted at work. My next doctor's appointment is March 14, 2019, so I am unsure how you wish for me to go to work, or to where you expect me to report prior to my next doctor's appointment. I will not have a medical release before that appointment.
>
> I have still not received a phone call from anyone at the City Attorney's office inquiring about my health. I mention that because it is shockingly rude and insensitive. Nor have I received any communication whatsoever that resembles a conversation about what would be a reasonable accommodation after management let the health and cleanliness conditions in City Hall East reach the point that I almost died. I have only received orders to show up at different work sites for different jobs.
>
> Our last communication involved my unilateral and involuntarily transfer. I called my association for assistance because involuntary transfers involve the MOU, and in my case also violate Whistleblower statutes. Someone told Oscar Winslow, the Association President, that I requested the transfer. I did not. That was a lie. I asked you with which supervisor I should begin the grievance process. You replied characterizing my response as a refusal of your reasonable accommodation but never answered my question about

> which supervisor I should contact.
>
> Based on your response I incorrectly assumed that transfer was not going to happen. Julie San Juan was included in today's email, but not Cory Brente. Should I assume the office is continuing with the illegal unilateral involuntary transfer?
>
> I look forward to your rapid response.

477. David Trujillo responded (on February 22) that the transfer to the Pacific Office, Criminal Branch was "no longer happening," although he gave no indication regarding whether anything *would* be happening. EMPLOYER Defendants haves still not accommodated Plaintiff's disabilities, however. EMPLOYER Defendants have not fumigated City Hall or City Hall East. They have not even removed the carpeting. EMPLOYER Defendants have also not increased the custodial crews, and have not provided employees and visitors to the building with any type of protective clothing they could wear.

478. As of this date, Plaintiff has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated.

479. Plaintiff has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. (The Los Angeles Police Department buildings have been fumigated on about October 10, October 26, and December 14, 2018.) Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East or to allow Plaintiff to do her job in the Police Litigation Unit somewhere other than downtown.

480. Plaintiff's most recent medical leave expired March 7, 2019. She has been unable to see Dr. Sokolov again to either have her leave extended or be cleared to return to work, because her workers' compensation claim had been closed, either by Defendant CITY or by its workers' compensation administrator, Elite Claims.

481. There is clearly a causal link between Plaintiff's complaints of unsafe conditions and the adverse employment actions which were taken against her by Defendant CITY and Defendant CITY ATTORNEY'S OFFICE almost immediately thereafter. Among other things, Defendant CITY and

Defendant CITY ATTORNEY'S OFFICE (on January 31, 2019) ordered Plaintiff to return to work right after Plaintiff was interviewed by Joel Grover of NBC 4 local news, and then (on February 6, 2019), within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East, demoting Plaintiff from being a Deputy City Attorney who was defending Defendant CITY in million-dollar cases against the Los Angeles Police Department and its employees (mostly brought in federal court), to an attorney assigned to handle misdemeanor arraignments at the LAX courthouse – an entry-level assignment which she had performed over 20 years earlier.

482. As a direct and legal result of Defendants' unlawful actions, Plaintiff has suffered economic damages pursuant to Civil Code sections 3281, 3283, and 3333. Plaintiff has and will continue to suffer a loss of earnings and benefits, and other employment benefits and job opportunities. Plaintiff has suffered economic damages because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants (once again) terminated her health insurance, all as a result of Defendants' unlawful actions. Plaintiff has also suffered irreparable harm to her career by being forced into this situation where she was required to speak out regarding the unsafe working conditions at the offices occupied by Defendant CITY ATTORNEY'S OFFICE.

483. As a direct and legal result of Defendants' unlawful actions, Plaintiff has also suffered and continues to suffer an exacerbation of her typhus symptoms, conditions and disabilities, pain and suffering, mental anguish, depression, anxiety, loss of self-esteem, anhedonia, humiliation, damage to her reputation, and general emotional distress.

484. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff has been forced and/or will be forced to incur expenses for medical care including, but not limited to, treatment by physicians and other health professionals, medical examinations, medical procedures, laboratory costs, prescription medications, and other incidental medical expenses. Plaintiff is therefore entitled to compensatory damages in an amount to be proven at trial.

485. As a direct result of the actions and conduct described above, which constitute violations of Labor Code section 1102.5, Plaintiff has been damaged and seeks penalties against Defendants pursuant to Labor Code sections 1102.5(f).

FOURTEENTH CAUSE OF ACTION

WHISTLEBLOWING – VIOLATION OF LABOR CODE SECTION 6310

[Against EMPLOYER Defendants and DOE Defendants]

486. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 164 above, as though fully set forth in this cause of action.

487. This cause of action is brought pursuant to Labor Code section 6310. EMPLOYER Defendants have at all relevant times herein been employers pursuant to Industrial Welfare Commission Wage Order 4-2001, § 2(H) and Labor Code section 6310. Plaintiff is and was an employee of EMPLOYER Defendants.

488. Labor Code section 6310 prohibits discrimination against any employee because the employee has made any oral or written complaint to Cal/OSHA, other governmental agencies having statutory responsibility for or assisting Cal/OSHA with reference to employee safety or health, or her employer. Labor Code section 6310 also prohibits discrimination against any employee because the employee has instituted or caused to be instituted any proceeding under or relating to her rights pursuant to Cal/OSHA. Labor Code section 6310 also prohibits discrimination against any employee because the employee has reported a work-related fatality, injury, or illness.

489. Any employee who is demoted or in any other manner discriminated against in the terms and conditions of employment by her employer because the employee has made a bona fide oral or written complaint to Cal/OSHA, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, her employer, or her representative, of unsafe working conditions, or work practices, in her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to promote, or otherwise restore an employee or former employee who has been determined to be eligible for promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

490. On Thursday, November 1, 2018, Plaintiff became extremely ill, with a very high fever, and was diagnosed as probable Viral Meningitis. Plaintiff's physician (Terry Ishihara, M.D.) wanted to admit Plaintiff to the hospital, but she Declined to go because of being without health insurance. Plaintiff could

not even have blood tests performed because of the lack of health insurance. Dr. Ishihara advised Plaintiff that she would need to stay in bed for at least a week, and probably longer. On November 1, 2018, Plaintiff advised both Defendant BRENTE and HR Analyst David Trujillo that she was sick, that she probably had Viral Meningitis, and that her doctor had advised at least a week of bed rest.

491. On Monday, November 5, 2018, persons from the Police Litigation Unit started emailing Plaintiff assignments to do at home. Not only was Plaintiff very ill, but she did not have any of the files she would need in order to do the work she was being assigned anyway. Plaintiff notified both the Police Litigation Unit and David Trujillo of these facts.

492. On November 8, 2018, Plaintiff learned that her health insurance had been reactivated.[21] Plaintiff was still very ill at this time. Her fever was not as high as previously, but she was still suffering from fever, headaches, chills, and severe vertigo. On November 20, Plaintiff's physician said it could take up to two weeks for her to recover from what, at that point, had been diagnosed as Viral Meningitis. Plaintiff's physician provided her with a note stating she could not return to work until December 3, 2018.

493. While Plaintiff was at the doctor on November 20, she had blood drawn for the purpose of testing for typhus. On November 27, 2018, Plaintiff learned she had typhus (specifically, typhus fever Group IgG, IgM). Typhus is a very serious disease, which can be fatal if left untreated. Typhus can cause Viral Meningitis. Although typhus is highly treatable with antibiotics, Plaintiff could not go to the hospital or even have blood tests until almost three weeks after her symptoms started, because her health insurance had not yet been re-activated (even though she was eligible for re-activation starting October 27, 2018).

494. Plaintiff most likely contracted typhus while working for EMPLOYER Defendants. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los Angeles. There has been a typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus Zone." Plaintiff's office is only two blocks outside the Typhus Zone.

495. On November 29, 2018, Plaintiff sent an email to Defendant BRENTE, copied to David

[21] Plaintiff was eligible for health insurance starting October 27, 2018, but despite Plaintiff urging EMPLOYER Defendants to hurry and get her insurance re-activated, Plaintiff's health insurance was not actually re-activated until November 8, 2018.

Trujillo, in which she wrote:

> Given the fact there is a typhus outbreak in Downtown LA I would like to file a workers' compensation claim. Would you please send me the paperwork.
>
> Thank you very much.

David Trujillo replied that he would have "Nancy send over the paperwork." Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE, relating to her typhus diagnosis, on December 1, 2018. In that document, Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician phoned me and informed me I tested positive for typhus.

Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

496. Plaintiff did not return to work on December 3, 2018, however, because she was on a planned family vacation through December 10, 2018 plus, as it turned out, she was still ill from the typhus the entire time, so she spent most of the vacation in bed, with intermittent fevers and with severe headaches. Plaintiff planned to return to work on December 11, 2018, but was unable to return for two reasons: 1) She was still suffering from severe vertigo, dizziness, and disequilibrium which are symptoms of typhus; and 2) She feared contracting typhus again, since her office is within two blocks of the Typhus Zone. (Typhus can be contracted repeatedly, and since Plaintiff has an auto-immune disorder, she is at increased risk for contracting typhus. In California, an employee is not required to work under hazardous working conditions which present a serious risk of harm.) Although EMPLOYER Defendants had indicated they had sprayed pesticide in Plaintiff's personal office, the rest of the building had not been fumigated, so Plaintiff would still not be protected from typhus-carrying fleas.

497. Plaintiff most likely contracted typhus while working for EMPLOYER Defendants. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los Angeles. There has been a typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus

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498. On November 29, 2018, Plaintiff sent an email to Defendant BRENTE, copied to David Trujillo, in which she wrote:

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500. On December 9, 2018, Plaintiff learned that her health insurance had been changed from Anthem, to Kaiser Permanente, without anyone even giving her any notice of this change. (Plaintiff found

out when she attempted to get a prescription refilled at the pharmacy.)

501. On December 20, 2018, when Plaintiff learned that Defendant CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the typhus outbreak, and the fact that she contracted typhus. Also on December 20, 2018, Cal/OSHA sent a letter to Defendant CITY ATTORNEY'S OFFICE, notifying it that a complaint had been filed and giving it five days to respond. Plaintiff has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

502. In early January 2019, Plaintiff contacted the Los Angeles County Vector Control District and advised them that she had contracted typhus while working at City Hall East.

503. On January 10, 2019 and again on January 22, 2019, Plaintiff (through her attorney) complained to Vivienne Swanigan about the flea and rat infestation at City Hall East which had caused Plaintiff to contract typhus, and demanded that City Hall East be fumigated or Cal/OSHA indicated the building was safe for employees to work there.

504. On January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, **and that Plaintiff was expected to report for work on Monday, February 4, 2019**. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for reporting to Cal/OSHA, Los Angeles County Vector Control District , and Vivienne Swanigan about contracting typhus at City Hall East and about the safety issues which existed at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

505. On February 1, 2019, Plaintiff sent an email to David Trujillo, in reply to his January 31, 2019 email ordering her to report to work. In her email, Plaintiff stated, among other things:

> The conditions in City Hall East are a threat to the health of City employees and to the public health. The City Attorney's office has been contacted by CalOSHA about the threat to public health and has ignored their letter. From my understanding, the City Attorney has not even notified other departments that a City Attorney employee contracted typhus at City Hall East. No one has notified the Mayor's office.
>
> The fact the City Attorney has known of this health threat since November 2018; known that a City employee has been diagnosed with typhus since December 2018; was contacted by Cal/OSHA December 20, 2018; has my medical records proving I have Typhus since January 10, 2019; and has done nothing about protecting the employees or the public entering the building is obscene. The City Attorney has not even notified others in the building that an employee was infected so they know of their exposure there or they can take precautions. I would also add that the rat problem at City Hall East is not new. This has been going on for years, and the City and the City Attorney's Office allowed the infestation to get so out of control that people are being exposed to a disease which is most often associated with devastating epidemics from the Middle Ages.
>
> I have been employed by the City Attorney's Office for over 22 years, and am being treated like the trash which is lining the streets around City Hall East. I seriously doubt a male who is a 22-year deputy city attorney and contracted Typhus on the job would be treated as I have been and am being treated. I should not be surprised, though, as this discrimination on the basis of sex has been consistent behavior by the City Attorney's Office over the years.
>
> I implore the City and the City Attorney's Office to protect the City employees, clients, co-counsel and opposing counsel, witnesses, contractors, and the public from this public health crisis you are allowing to continue.

506. On or about February 5, 2019, Plaintiff told Oscar Winslow, President of the Los Angeles City Attorneys Association (LACAA), about her typhus diagnosis. Mr. Winslow was very surprised, since no one at Defendant CITY ATTORNEY'S OFFICE had told its employees anything about protecting themselves from typhus-carrying fleas. Something as simple as advising employees to wear boots would have provided them a small amount of protection.

507. On February 6, 2019 David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her **new work location** at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this

position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million-dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the typhus epidemic and, specifically, the flea-infestation at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

508. On February 8, 2019, knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch.

509. On February 11, 2019, Plaintiff once again went to U.S. HealthWorks, where she was once again designated as "temporarily partially disabled." Since Plaintiff was going to see the City-designated infectious disease specialist on February 14, the doctor at U.S. HealthWorks extended her disability period only through February 14, 2019. Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on February 11, 2019.

510. Also on February 11, 2019, Plaintiff sent David Trujillo a very long email, stating her objections to the demotion to the Pacific Office, Criminal Branch (handling misdemeanor arraignments at the LAX courthouse). Among other things, Plaintiff wrote:

> In early December 2018, I reported the typhus danger to Los Angeles County Health Department, Acute Communicable Disease Department. On December 20, 2018, I reported the typhus danger at City Hall East, and the City Attorney's refusal to take any action to protect its employees, to Cal/OSHA. In early January 2019, I reported the same health dangers the

City Attorney was knowingly allowing to persist to Los Angeles County Vector Control District.

I also filed a complaint with the Department of Fair Employment and Housing, which was served on the City Attorney's Office on January 17. Later in January, after the City Attorney's office continued to stonewall me over the public health issue it was allowing to persist, I started talking to NBC. I talked to Joel Grover about the failure of the City Attorney's Office to protect me and then for the past several months its employees (and the members of the public who visit City Hall and City Hall East) from typhus. We discussed at length the City Attorney's Office had known about this for months and had not even sent a department wide email warning employees about the danger they faced.

The day after the City Attorney's administration received a call from Joel Grover regarding safety precautions taken after my diagnosis, on January 31, you sent me an email once again ordering me back to work "or else," despite the orders from U.S. HealthWorks – the City's own industrial medicine provider. You falsely stated "driving or operating heavy equipment" is not an essential function of my job. I replied to your email by my email dated February 4. In case you do not recall the contents of my email, I stated:

The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .

How the City Attorney could knowingly expose its employees to this horrible bacteria is shocking to me. The fact it knowingly exposes the public, who enters the building every day to conduct business, is criminal. The fact that you, Vivienne Swanigan, and the City Attorney's office are retaliating against me for standing up for my legal rights and for speaking out and telling people the danger they face walking into that building is unconscionable. . . .

My loud and repeated whistling to the Department of Fair Employment and Housing, the Los Angeles Superior Court, Cal/OSHA, the Los Angeles Vector Control District and the media has resulted not in the City Attorney's Office doing the right (and smart) thing, but instead in you (and Vivienne Swanigan) sending the February 6, 2019 email in which you advise me that I am being transferred to the airport courthouse, where I will be a misdemeanor line deputy doing misdemeanor arraignments. This is so obviously a demotion it constitutes unlawful retaliation under common law and several sections of the Labor Code. (My attorney is currently amending the lawsuit to include the latest acts against me.)

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511. On February 13, 2019, Plaintiff filed a complaint with the U.S. Department of Occupational Safety and Health Administration (Federal OSHA) alleging retaliation for filing a complaint with Cal/OSHA regarding safety and health hazards at her workplace.

512. On February 14, 2019, Plaintiff saw infectious disease specialist Richard T. Sokolov, M.D. (another City-designated doctor). Dr. Sokolov directed that Plaintiff be off work for the next three weeks. Dr. Sokolov told Plaintiff that since she was still suffering from vertigo, her brain had not recovered from the typhus, so she should not be working. Dr. Sokolov also stated it was his professional opinion that Plaintiff had contracted the typhus while working at City Hall East.

513. Also on February 14, 2019, Plaintiff sent another very long email to David Trujillo. Among other things, Plaintiff wrote:

> I object to the term "Personal Medical Leave" since this is leave which is necessary because of an on-the-job injury, and for which I have filed a workers' comp claim. I am also confused regarding what this means. It is not clear to me whether the medical leave is intended to be from now until the City Attorney's Office comes up with an appropriate reasonable accommodation, or whether it is only for Monday, Wednesday, and Thursday of this week. That question is probably not that important now, though, because today I saw the infectious disease doctor Richard Sokolov, M.D. (who U.S. HealthWorks referred me to and will be my industrial injury treating physician), and he put me off work for three weeks, effective today. A copy of Dr. Sokolov's prescription placing me off work is attached to this email.

> I cannot tell you how disappointing it is to see the level of indifference the City Attorney's office has shown to me, to the safety of the employees who work in City Hall East, and to the health of the members of the public forced to come to the building to conduct their business with the City. This office has been on notice of my illness since November 27, 2018. Their failure to act, their failure to even notify people of the danger they face walking into the building is grossly negligent and a complete abdication of the public trust.

514. On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

515. Later on February 22, 2019, Plaintiff sent an email to David Trujillo in which she wrote:

> I received your letter granting personal medical leave until March 7, 2019, due to my recovering from the typhus I contracted at work. My next doctor's appointment is March 14, 2019, so I am unsure how you wish for me to go to work, or to where you expect me to report prior to my next doctor's appointment. I will not have a medical release before that appointment.
>
> I have still not received a phone call from anyone at the City Attorney's office inquiring about my health. I mention that because it is shockingly rude and insensitive. Nor have I received any communication whatsoever that resembles a conversation about what would be a reasonable accommodation after management let the health and cleanliness conditions in City Hall East reach the point that I almost died. I have only received orders to show up at different work sites for different jobs.
>
> Our last communication involved my unilateral and involuntarily transfer. I called my association for assistance because involuntary transfers involve the MOU, and in my case also violate Whistleblower statutes. Someone told Oscar Winslow, the Association President, that I requested the transfer. I did not. That was a lie. I asked you with which supervisor I should begin the grievance process. You replied characterizing my response as a refusal of your reasonable accommodation but never answered my question about which supervisor I should contact.
>
> Based on your response I incorrectly assumed that transfer was not going to happen. Julie San Juan was included in today's email, but not Cory Brente. Should I assume the office is continuing with the illegal unilateral

involuntary transfer?

I look forward to your rapid response.

516. David Trujillo responded (on February 22) that the transfer to the Pacific Office, Criminal Branch was "no longer happening," although he gave no indication regarding whether anything *would* be happening. EMPLOYER Defendants haves still not accommodated Plaintiff's disabilities, however. EMPLOYER Defendants have not fumigated City Hall or City Hall East. They have not even removed the carpeting. EMPLOYER Defendants have also not increased the custodial crews, and have not provided employees and visitors to the building with any type of protective clothing they could wear.

517. As of this date, Plaintiff has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated.

518. Plaintiff has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. (The Los Angeles Police Department buildings have been fumigated on about October 10, October 26, and December 14, 2018.) Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East or to allow Plaintiff to do her job in the Police Litigation Unit somewhere other than downtown.

519. Plaintiff's most recent medical leave expired March 7, 2019. She has been unable to see Dr. Sokolov again to either have her leave extended or be cleared to return to work, because her workers' compensation claim had been closed, either by Defendant CITY or by its workers' compensation administrator, Elite Claims.

520. There is clearly a causal link between Plaintiff's complaints of unsafe conditions and the adverse employment actions which were taken against her by Defendant CITY and Defendant CITY ATTORNEY'S OFFICE almost immediately thereafter. Among other things, Defendant CITY and Defendant CITY ATTORNEY'S OFFICE (on January 31, 2019) ordered Plaintiff to return to work right after Plaintiff was interviewed by Joel Grover of NBC 4 local news, and then (on February 6, 2019), within days of Plaintiff speaking to various media about contracting typhus while working at City Hall East,

demoting Plaintiff from being a Deputy City Attorney who was defending Defendant CITY in million-dollar cases against the Los Angeles Police Department and its employees (mostly brought in federal court), to an attorney assigned to handle misdemeanor arraignments at the LAX courthouse – an entry-level assignment which she had performed over 20 years earlier.

521. As a direct and legal result of Defendants' unlawful actions, Plaintiff has suffered, and will continue to suffer, lost wages and benefits pursuant to Labor Code section 6310 because of being unable to return to work, because of being required to exhaust her paid vacation and paid sick leave, because of having to take unpaid leave, and because of having to pay her own medical expenses when Defendants (once again) terminated her health insurance, all as a result of Defendants' unlawful actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows on all causes of action:

On the First through Tenth Causes of Action – For Violations of the FEHA:

1) For compensatory damages including damages for lost earnings and benefits and other employment benefits and job opportunities, mental suffering, emotional distress, medical expenses, and other special and general damages according to proof at trial;

2) For prejudgment interest at the maximum legal rate;

3) For punitive and exemplary damages in an amount appropriate to punish Defendants (who are not public entities)and to deter others from engaging in similar conduct, pursuant to the FEHA, Civil Code section 3294, and all other applicable statutes;

4) For the payment of Plaintiff's reasonable attorney fees and expert witness fees pursuant to Government Code section 12965(b), and all other applicable statutes;

5) For costs of suit herein incurred; and

6) For such other and further relief as the court may deem just and proper.

On the Eleventh Causes of Action – For Retaliation in Violation of the First Amendment

1) For compensatory damages including damages for lost earnings and benefits and other employment benefits and job opportunities, mental suffering, emotional distress, medical expenses, and other

special and general damages according to proof at trial;

2) For prejudgment interest at the maximum legal rate;

3) For punitive and exemplary damages in an amount appropriate to punish Defendants (who are not public entities)and to deter others from engaging in similar conduct, pursuant to Civil Code section 3294, and all other applicable statutes;

4) For costs of suit herein incurred; and

5) For such other and further relief as the court may deem just and proper.

On the Twelfth Causes of Action – for Whistleblowing – Common Law Retaliation in Violation of Public Policy:

1) For compensatory damages including damages for lost earnings and benefits and other employment benefits and job opportunities, mental suffering, emotional distress, medical expenses, and other special and general damages according to proof at trial;

2) For prejudgment interest at the maximum legal rate;

3) For punitive and exemplary damages in an amount appropriate to punish Defendants (who are not public entities) and to deter others from engaging in similar conduct, pursuant to Civil Code section 3294, and all other applicable statutes;

4) For costs of suit herein incurred; and

5) For such other and further relief as the court may deem just and proper.

On the Thirteenth Causes of Action – For Whistleblowing – Retaliation in Violation of California Labor Code Section 1102.5

1) For compensatory damages including damages for lost earnings and benefits and other employment benefits and job opportunities, mental suffering, emotional distress, medical expenses, and other special and general damages according to proof at trial;

2) For prejudgment interest at the maximum legal rate;

3) For penalties against Defendants pursuant to Labor Code sections 1102.5(f);

4) For costs of suit herein incurred; and

5) For such other and further relief as the court may deem just and proper.

On the Fourteenth Causes of Action – For Whistleblowing – Violation of Labor Code Section 6310:

1) For compensatory damages including damages for lost earnings and benefits and other employment benefits and job opportunities, mental suffering, emotional distress, medical expenses, and other special and general damages according to proof at trial;

2) For prejudgment interest at the maximum legal rate;

3) For costs of suit herein incurred; and

4) For such other and further relief as the court may deem just and proper.

Dated: May 21, 2019

ESKRIDGE LAW

/s/ GAYLE L. ESKRIDGE
By Gayle L. Eskridge/Janelle L. Menges/
Jacqueline M. Wade
Attorneys for Plaintiff ELIZABETH L. GREENWOOD

DEMAND FOR JURY TRIAL

PLAINTIFF Elizabeth L. Greenwood hereby demands a trial by jury on all causes of action alleged herein in the First Amended and Supplemental Complaint.

Dated: May 21, 2019

ESKRIDGE LAW

/s/ GAYLE L. ESKRIDGE
By Gayle L. Eskridge/Janelle L. Menges/
Jacqueline M. Wade
Attorneys for Plaintiff ELIZABETH L. GREENWOOD

EXHIBIT 1

TO FIRST AMENDED AND SUPPLEMENTAL COMPLAINT OF ELIZABETH L. GREENWOOD

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency — GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING — KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
http://www.dfeh.ca.gov | Email: contact.center@dfeh.ca.gov

January 14, 2019

Elizabeth Greenwood
1147 Englander Street
San Pedro, California 90731

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201901-04788314
Right to Sue: Greenwood / City of Los Angeles, a municipal corporation et al.

Dear Elizabeth Greenwood,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 14, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
http://www.dfeh.ca.gov | Email: contact.center@dfeh.ca.gov

January 14, 2019

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 201901-04788314
Right to Sue: Greenwood / City of Los Angeles, a municipal corporation et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of
Elizabeth Greenwood

DFEH No. 201901-04788314

Complainant,

vs.

City of Los Angeles, a municipal corporation
200 N. Main Street, Room 800
Los Angeles, California 90012

Office of the Los Angeles City Attorney, a department of the City of Los Angeles
200 N. Main Street, Room 800
Los Angeles, California 90012

Cory Brente
200 N. Main Street, Room 800
Los Angeles, California 90012

Michael N. Feuer, City Attorney
200 N. Main Street, Room 800
Los Angeles, California 90012

Respondents

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1. Respondent **City of Los Angeles, a municipal corporation** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Elizabeth Greenwood**, resides in the City of **San Pedro** State of **California.**

3. Complainant alleges that on or about **January 14, 2019**, respondent took the following adverse actions:

Date Filed: January 14, 2019

Complainant was harassed because of complainant's sex/gender, family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), other, pregnancy, childbirth, breast feeding, and/or related medical conditions, sexual harassment- hostile environment.

Complainant was discriminated against because of complainant's sex/gender, family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), other, pregnancy, childbirth, breast feeding, and/or related medical conditions, sexual harassment- hostile environment and as a result of the discrimination was denied hire or promotion, reprimanded, denied equal pay, asked impermissible non-job-related questions, denied a work environment free of discrimination and/or retaliation, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), other, denied work opportunities or assignments, denied or forced to transfer.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation, requested or used leave under the california family rights act or fmla (employers of 50 or more people) and as a result was denied hire or promotion, reprimanded, denied equal pay, asked impermissible non-job-related questions, denied a work environment free of discrimination and/or retaliation, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), other, denied or forced to transfer.

Additional Complaint Details: Please see the attached document entitled "Second DFEH Complaint Attachment."

Date Filed: January 14, 2019

VERIFICATION

I, **Janelle L. Menges**, am the **Attorney** in the above-entitled complaint. I have read the foregoing complaint and know the contents thereof. The matters alleged are based on information and belief, which I believe to be true.

On January 14, 2019, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Torrance, California

Date Filed: January 14, 2019

ATTACHMENT TO
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING COMPLAINT
OF ELIZABETH GREENWOOD

ABBREVIATIONS

Claimant ELIZABETH L. GREENWOOD is referred to herein as "Claimant."

Respondent CITY OF LOS ANGELES is referred to herein as Respondent CITY.

Respondent OFFICE OF THE LOS ANGELES CITY ATTORNEY is referred to herein as "Respondent CITY ATTORNEY'S OFFICE."

Respondent MICHAEL N. FEUER, CITY ATTORNEY is referred to herein as "Respondent FEUER."

Respondent FEUER, Respondent CITY, and Respondent CITY ATTORNEY'S OFFICE may be jointly referred to herein as the "EMPLOYER Respondents."

Respondent CORY BRENTE is referred to herein as"Respondent BRENTE."

FACTS

At all relevant times herein, Claimant has been a resident of the County of Los Angeles, State of California and employed by EMPLOYER Respondents. Claimant is a 54-year-old female who has multiple physical disabilities.

At all relevant times herein, Respondent CITY has been a municipal corporation in the County of Los Angeles, State of California.

At all relevant times herein, Respondent CITY ATTORNEY'S OFFICE has been a department of Respondent CITY.

At all relevant times herein, Respondent FEUER has been the City Attorney for Respondent CITY. Respondent FEUER is an elected official, who is in charge of and responsible for Respondent CITY ATTORNEY'S OFFICE, and who serves as the lawyer for Respondent CITY OF LOS ANGELES.

At all relevant times herein, Respondent CITY OF LOS ANGELES and Respondent CITY ATTORNEY'S OFFICE were and now are valid government entities, duly organized and existing under the laws of the State of California, having their principal places of business in the County of Los Angeles, State of California.

At all relevant times herein, Respondent CITY and Respondent CITY ATTORNEY'S OFFICE have each had hundreds of employees.

At all relevant times herein, Respondent BRENTE is and has been a Supervising Assistant City Attorney employed by EMPLOYER Respondents, and assigned to the Police Litigation Unit of Respondent CITY ATTORNEY'S OFFICE. At all relevant times herein, Respondent BRENTE was acting in the course and scope of his employment with EMPLOYER Respondents, as a supervisor, manager, director, or agent of EMPLOYER Respondents.

Claimant has been employed as a Deputy City Attorney with EMPLOYER Respondents since July 1996, when she began as a Deputy City Attorney I, Step A. In May 1998, Claimant was assigned to Central Trials. In March 1999, Claimant was assigned to the Gangs Unit, where she worked as a prosecutor from 1999 to 2007. In March 2007, Claimant was transferred to Homeland Security and promoted to Deputy City Attorney III, Step G (equivalent to Step 13 under the new system). In March 2009, she was transferred to the Neighborhood Prosecutor Program, working as Neighborhood Prosecutor – South Bureau. In that position, Claimant attended community meetings and prosecuted projects and issues which were most negatively affecting the area to which she was assigned.

Over the years, Claimant has received numerous awards and recognitions from Respondent CITY ATTORNEY'S OFFICE, the Los Angeles Police Department, the Office of the District Attorney, the County of Los Angeles, the California State Senate, the California Legislature Assembly, and Congresswoman Jane Harman. Claimant has been positively mentioned in the *Daily Breeze* about 20 times.

In 2009, Claimant began suffering from back pain, as a result of being required to sit at a desk long hours at work, and being provided with inadequate office furniture and equipment. On November 3, 2009, Claimant was diagnosed by Roy Simon, M.D. as having severe lumbar radiculopathy. Claimant underwent x-rays and an MRI of her spine on November 9, 2009; based on that, Arnold Rappaport, M.D. diagnosed her as having disc degenerative changes at multiple levels, and disc protrusion at the L4-5 level, resulting in a mild neural foraminal stenosis.

On November 17, 2009, December 1, 2009, January 8, 2010, and February 2, 2010, Claimant underwent lumbar epidural steroid injections and selective nerve root blocks at L5-S1 (left side). Claimant informed her immediate supervisor at the time, Sonja Dawson (Supervising Neighborhood Prosecutor – South Bureau), and the Human Resources Department of her diagnosis, and of her need to take time off for the medical procedures (which was usually one day per procedure, although a couple times she was off three days per procedure due to anaphylactic reactions). In addition to the procedures mentioned above, Claimant went to physical therapy three times per week at multiple locations, and also worked with a personal strength trainer.

Despite the aggressive treatment, Claimant's symptoms worsened. By March 2010, she had pain when sitting at her desk, driving, lifting, carrying, reaching, bending, and squatting. Her diagnosis

at that time (by William Dillin, M.D.) was: 1) Lumbar Degenerative Disc Disease, 2) Lumbar Radiculopathy, and 3) Lumbar Disc Herniation. Lumbar spine surgery was recommended. On March 12, 2010, Claimant underwent spinal surgery, having: 1) A left L4-L5 Modified Microdiscectomy; 2) A left L4 Hemilaminotomy; and (3) A left L4-L5 Lateral Recess Resection. She was on leave pursuant to the Family and Medical Leave Act ("FMLA") and CFRA for three months, from approximately March 11 through June 5, 2010.

Prior to Claimant's surgery and CFRA leave, she had been assigned to the Neighborhood Prosecutor Program – South Bureau, where she interacted with the community and served as a Neighborhood Prosecutor. She enjoyed this job because it involved working with the community and being in court. Claimant had an office in the San Pedro City Hall during the time she was a Neighborhood Prosecutor, which worked well since Claimant resided in San Pedro.

On September 7, 2010, Claimant was transferred to Housing Enforcement because of a request by Mary Clare Molidor. Claimant did not want this transfer because, for someone who had been a prosecutor in the Gang Unit, then an attorney in Homeland Security, then a Neighborhood Prosecutor, being transferred to Housing Enforcement was not a forward trajectory for her career path, and was not even a lawyer type of job. However, Mary Clare Molidor told Claimant she would continue to be working out of an office in San Pedro (which was of course important to Claimant because driving exacerbated her lumbar spine disability), and attempted to convince Claimant that even though the position was not really an attorney position, but actually more of a mediator position, once she got into the position, she would like it. At Housing Enforcement, Claimant mediated disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance. Although she did not like the job at first, Mary Clare Molidor was right – after Claimant performed this job for a while, she came to enjoy it because she thought she was making a difference in peoples' lives.

In September 2010, Claimant informed her new supervisor, Jonathan Galatzan (Supervising Attorney, Housing Enforcement), of her lumbar spine disability almost immediately after being transferred to Housing Enforcement. Later in September 2010, Claimant told Jonathan Galatzan about the lower back pain she was having, especially when sitting in her desk chair at work. (Claimant was working from an office in the San Pedro City Hall at this time, so at least she did not have to spend hours driving.) Over the next few months, Claimant repeatedly told Jonathan Galatzan about the pain she was experiencing while sitting, but Respondents failed to initiate a timely, good-faith, interactive process or to do anything else regarding Claimant's complaints of pain caused by sitting at her desk.

In early 2011, Roy Simon, M.D. prescribed Claimant an anti-inflammatory and a pain medication, and also prescribed that she have an ergonomic chair for work, and that an ergonomic evaluation of her office be conducted. Claimant submitted the prescription for the ergonomic chair to the Human

Resources Department, but absolutely no action was taken.[1] Claimant continued complaining to Jonathan Galatzan about her ongoing back pain while sitting in her desk chair. She asked him to try to get the Human Resources Department to arrange for the ergonomic evaluation, but he was no help at all.

In fact, rather than attempt to assist Claimant in obtaining the ergonomic evaluation, in spring and summer 2011, Jonathan Galatzan began harassing and discriminating against Claimant.[2] For example, although Claimant was already mediating disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance on a city-wide basis (while working from an office in the San Pedro City Hall), Jonathan Galatzan assigned Claimant additional work consisting of code violation cases which required her to travel to downtown Los Angeles on a regular basis. This is not what Claimant had been assigned to do when Mary Clare Molidor caused Claimant to be transferred into Housing Enforcement.[3] Claimant did not want this new assignment and did not agree to it. Claimant's workload mediating Rent Stabilization Ordinance violations city-wide was a full-time job, and Claimant also spent several hours per week in her role as an elected commissioner of the Los Angeles City Employees' Retirement System ("LACERS"). Adding code violation cases not only increased Claimant's workload, but required her to spend much more time in downtown Los Angeles, rather than in her office in San Pedro. Also, rather than attempt to assist Claimant in obtaining the ergonomic evaluation of her office (which was in San Pedro), Jonathan Galatzan assigned Claimant to a work area in downtown Los Angeles which consisted of a desk in a storage closet, which was less ergonomically correct than her office in San Pedro, and with a chair which was even more uncomfortable than her chair in San Pedro. The additional travel of course exacerbated Claimant's disability, and she told Jonathan Galatzan this. Jonathan Galatzan nonetheless left the code violation assignments on Claimant's storage closet desk.

Throughout summer and fall, 2011, Claimant complained to Jonathan Galatzan about how the downtown assignments were exacerbating her lumbar spine disability, due both to the travel and the completely non-ergonomic storage closet office. Jonathan Galatzan responded on October 14, 2011, by issuing a Notice to Correct Deficiencies to Claimant, in which he accused her of failing to file four code violation cases on time, even though filing delays had been a longstanding problem within the Housing Enforcement Department for many years before Claimant was assigned to the unit.

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[1]This was the first of many requests Claimant made for reasonable accommodations for her physical disability.

[2]This was the beginning of the harassment and discrimination to which Claimant has been subjected because of her physical disability.

[3]Claimant's job, as requested by Mary Clare Molidor, Senior Assistant City Attorney in Charge of Safe Neighborhoods, was to mediate and prosecute violations of the City's Rent Stabilization Ordinance. It was not to prosecute families who had scraped together enough money to purchase an apartment building where there had been a previous illegal subdivision.

Additionally, the practice in Housing Enforcement was to delay the cases for years, until the owners were able to gather enough money to make the repairs. It was not uncommon for cases to last several years. Sometimes when it was clear the owners did not have any money to make repairs, cases lasted so long that the statute of limitations ran. This was happening for years before Claimant began to be assigned the code violation cases (in addition to her **full-time** assignment of mediating Rent Stabilization Ordinance violations).

In approximately November 2011, Jonathan Galatzan was replaced by Donald Cocek. Claimant immediately told Donald Cocek about her back injury, about her pain issues, and about her request for an ergonomic evaluation and an ergonomic chair, which she now needed in two offices (San Pedro and downtown). Claimant asked whether there was anything Donald Cocek could do to assist in obtaining these items. Rather than assist, however, Donald Cocek took the job of mediating Rent Stabilization Ordinance violations away from Claimant, so that she was handling code violation cases **exclusively**. When Claimant asked why he was doing this, Donald Cocek was not able to articulate a reason. Additionally, the non-disabled male attorney to whom the work was assigned did not even want the work. Changing Claimant's job so that she was handling code violation cases exclusively meant she was required to travel to downtown Los Angeles five days per week, and sit at a non-ergonomic desk in a non-ergonomic chair in the non-ergonomic storage closet office. These things exacerbated Claimant's back pain, and she was in pain 100% of the time she was either at work, or commuting to and from work. During late 2011 and 2012, Claimant repeatedly attempted to discuss this with Donald Cocek, but every time Claimant tried to talk with Donald Cocek, he stared at Claimant's breasts the entire time. (Donald Cocek also stared at Claimant's breasts every time she attempted to have a private conversation with him, and even sometimes when other people were present. Claimant did not report this sexual harassment, as it paled in comparison to the disability discrimination and harassment she was experiencing at the time, and having been working for Respondent CITY and Respondent CITY ATTORNEY'S OFFICE, sexual harassment was not new to her.)

Donald Cocek also constantly interrogated Claimant about the work she was doing for LACERS.[4] It seemed to irritate him that he could not manage all Claimant's time. When Claimant would inform Donald Cocek regarding when and what she was doing for LACERS, and where she was doing it, he accused her of lying. Donald Cocek even went to Earl Thomas, Chief of Criminal and Special Litigation Division, about this, and Earl Thomas sent Claimant a memo on November 9, 2011. In that memo, Earl Thomas acknowledged that Claimant had "an obligation to perform fiduciary duties on behalf of LACERS," yet demanded that Claimant obtain advance approval from

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[4]Claimant is one of seven people who manage LACERS. She was elected to a five-year term in 2009, and re-elected to a second five-year term in 2014. Respondent CITY and Respondent CITY ATTORNEY'S OFFICE pay for Claimant's time spent serving LACERS. What Claimant is doing in her role as an elected member of the Board of Administration of LACERS is none of Donald Cocek's business, but he frequently interrogated Claimant about her work on LACERS, then accused her of lying when she explained what she had been doing.

Donald Cocek before performing any of these fiduciary duties. Around this time, Claimant applied for a position in San Pedro, but right after she applied, the job requisition was canceled.

Claimant's back pain continued to worsen through 2011 and 2012. She repeatedly told Donald Cocek she was experiencing back pain, and needed an ergonomic evaluation of her office. Claimant also called the Human Resources Department during this time, to ask that the ergonomic evaluation (for which she had submitted a prescription in early 2011) be conducted without further delay.

On October 11, 2012, Claimant's father died very unexpectedly. The stress of this death exacerbated Claimant's back pain, and she was forced to take accrued vacation and sick leave from approximately October 2012 to approximately January 29, 2013. EMPLOYER Respondents were aware of Claimant's physical disability because she submitted a February 20, 2013 note from her primary care physician, Terry Ishihara, M.D., to the Human Resources Department. (EMPLOYER Respondents required Claimant to submit a note from her physician before they would classify any of her time off as sick leave. Until she provided the note, the time off had been classified as accrued vacation.)

The **first day** Claimant returned to work following her medical leave of absence, Donald Cocek gave Claimant a Notice to Correct Deficiencies for failing to file cases which he had assigned to her **after** she went out on approved leave, and the deadlines for which had passed **before** she returned from leave. Knowing Claimant was out on extended leave, Donald Cocek should have assigned the cases to other attorneys, but he did not. Instead, he kept the cases assigned to Claimant and waited for the statutes of limitations to run out in some of the cases, and other deadlines to pass in other cases. Claimant refused to sign the Notice to Correct Deficiencies for events which happened while she was on approved leave, and apparently Donald Cocek did not submit it to Personnel, because Claimant heard nothing more about it. Donald Cocek later tried to give Claimant a Notice to Correct Deficiencies relating to her work as an elected Commissioner of LACERS. Even though Donald Cocek had absolutely no involvement with LACERS, he accused Claimant of falsifying her time sheets for the time she was attributing to LACERS responsibilities. Claimant filed a grievance, Mary Clare Molidor mediated the matter, and the Notice to Correct Deficiencies went away. Even at the end of the mediation, however, Donald Cocek accused Claimant of "fudging" her time sheets. Claimant told Mary Clare Molidor she could not work for someone who thought she was a liar. Donald Cocek responded that he did not think Claimant was a liar, but that she needed to be honest on her time sheets. Therefore, although the Notice to Correct Deficiencies went away, nothing changed in Donald Cocek's treatment of Claimant.

On June 3, 2013, Claimant was finally transferred to a position which was commensurate with her many years of experience as a trial attorney. Claimant was transferred to the Police Litigation Unit, where she defends multimillion dollar claims against Respondent CITY in both state and federal court trials. Claimant's supervisor in the Police Litigation Unit was (and still is) Respondent BRENTE, Supervising Assistant City Attorney, Police Litigation Unit. This position involves longer hours than Claimant's previous position, and a significant amount of responsibility, and Claimant should have been promoted to at least a Deputy City Attorney IV, Step C, when she was transferred

to this position, but she was not, as a direct result of her sex and physical disability. Claimant alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step C, or higher.

Claimant informed Respondent BRENTE of her lumbar spine (musculoskeletal) disability, and of the accommodations she needed for that disability, immediately upon being transferred to the Police Litigation Unit in June 2013.

Although Claimant enjoyed the position in the Police Litigation Unit, she continued to suffer constant pain related to her lumbar spine disability. She complained repeatedly to Respondent BRENTE about the need for an ergonomic chair and for an ergonomic evaluation of her office. These complaints lasted through the remainder of 2013 and to the present.
Despite her constant pain and disability-related absences, Claimant has been very successful in her position as trial attorney with the Police Litigation Unit. In January 2014, she obtained a total defense verdict in a federal court bench trial (*Gheli Carpaccio v. Sergeant Todd Cataldi, et al.*). In June 2015, she obtained a defense verdict in a federal court jury trial (*Robert S. Markman and Lisa J. Markman v. Det. John Macchiarella, et al.*), and in September 2017, she won another major federal court jury trial (*Raymond Hiawatha Porter v. City of Los Angeles, et al.*) – each time saving Respondent CITY potentially hundreds of thousands of dollars. Claimant has in fact **never lost a trial** while in the Police Litigation Unit.

On her anniversary date in March 2014, Claimant should have been promoted to Deputy City Attorney IV, Step D, but she was not. (She only received her small anniversary step, which is virtually automatic.) Claimant alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step D, or higher.

On her anniversary date in March 2015, Claimant should have been promoted to Deputy City Attorney IV, Step E, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. (She only received her small anniversary step, which is virtually automatic.) Instead, she was stuck in the Deputy City Attorney III, Step G, position, where she had been since March 23, 2007. This failure and/or refusal to promote Claimant was a direct result of her sex and physical disability. Claimant alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step E, or higher.

Although Claimant was succeeding in the courtroom, she was continuing to experience constant back pain, especially when working at the desk in her office. Her pain when sitting down was so bad that she had family and friends drive her to and from work, and to and from the courthouses. Claimant's back pain was so severe that she had to go to the emergency department of San Pedro Hospital on July 7, 2015. On July 8, 2015, Claimant reported to her doctor at Kerlan-Jobe that she had pain in her back and left leg which had gotten worse, and that her symptoms worsened as she

sat and drove. At the time, she was unable to lift, carry, reach, bend, push, pull, climb, kneel, or squat. She was diagnosed with: 1) Lumbar degenerative disc disease; 2) Lumbar radiculopathy; and 3) Status post lumbar discectomy. Claimant continued to complain to Respondent BRENTE about her lumbar spine disability, and continued to request accommodations as discussed above.

A July 13, 2015 MRI of Claimant's lumbar spine showed: 1) Degenerative disc disease at L4-5 with a 2mm left lateral disc bulge/protrusion and contiguous 8x5mm left lateral extrusion effacing the left L5 nerve root; 2) Left laminectomy; 3) Disc desiccation at L5-S1 with a 3mm left lateral disc bulge abutting the left L5 and exiting the left L4 nerve roots; 4) Disc desiccation at L1-2 with a 12x4mm contiguous and superior extrusion abutting the posterior margin of the L1 vertebral body; 5) Mild disc desiccation at L3-4 with mild central canal stenosis due to facet and ligamentum flavum hypertrophy; 6) Disc desiccation at the L2-3 level with a 1.5mm central and right lateral disc bulge; and 7) Possible adenomyosis of the uterus. After that, Claimant began seeing Fabian Proano, M.D. for pain management.

Despite the continuous pain she was enduring, Claimant continued to prevail at trial. As mentioned above, in June 2015 Claimant obtained a defense verdict in a federal court jury trial (*Robert S. Markman and Lisa J. Markman v. Det. John Macchiarella, et al.*). Claimant continued trying to work and to deal with her back pain. On August 12, 2015 and again on October 5, 2015, she had a procedure consisting of lumbar selective nerve root blocks at the left L4-L5 level and a lumbar epidural steroid injection at the L4-L5 level.

Having received no response from Respondent BRENTE to her two and one-half years of requests for accommodations for her lumbar spine disability, on January 6, 2016, Claimant sent an email to Wanda Hudson in the Human Resources Department, stating that she had two prescriptions = one for an ergonomic chair and another for an ergonomic analysis of her office. Claimant explained to Wanda Hudson that she had lower back surgery five years earlier and had a reoccurrence of the problem in June 2015. Claimant explained that she was healing slowly and that although her office chair was only a couple years old, after sitting in the chair for a while, she had quite a bit of pain and difficulty standing back up. Claimant told Wanda Hudson that she hoped a new ergonomic chair, coupled with an ergonomic analysis of her office, would help. Claimant attached the new prescription for her chair to the email and said she could also get the prescription for the ergonomic analysis if needed. Claimant copied her supervisor, Respondent BRENTE, on the email to Wanda Hudson and, on January 7, 2016, forwarded the email to Cristina Sarabia, Human Resources Director.

On January 8, 2016, Cristina Sarabia sent an email in which she instructed Claimant to submit her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Respondent CITY's Personnel Department. Cristina Sarabia stated that Claimant needed to get her supervisor to approve her request (which seems very strange, since her supervisor is not an ergonomics specialist, and had in fact done nothing to facilitate Claimant obtaining the ergonomic items up to that point), and that after that happened, an appointment would be scheduled within two to three weeks. Cristina Sarabia further stated that, once the Occupational Safety and Health

Division determined what ergonomic items Claimant required, the Human Resources Department would work with Claimant to get the recommended equipment to her "promptly." Claimant immediately submitted her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Respondent CITY's Personnel Department, as directed by Cristina Sarabia.

An ergonomic evaluation of Claimant's workstation was conducted on February 1, 2016. On February 16, 2016, Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, issued a report in which she listed the equipment which Claimant required. This included a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. The report provided:

> **The requesting department supervisor or referring agent is responsible for addressing and carrying out the recommendations in this report. This includes ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to the workstation.** For City owned buildings, General Services Division can install some equipment. . . .

[Emphasis added.] Claimant's department supervisor was Respondent BRENTE.

Also on February 16, 2016, Daniela Zaccaro sent an email to Respondent BRENTE, Wanda Hudson, and Claimant, in which she provided information on possible vendors, and stated:

> **The requesting department supervisor or referring agent is responsible for addressing and carrying out the recommendations in this report. This includes ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to the workstation.** For City owned buildings, General Services Division can install some equipment. . . .

[Emphasis added.] By this time it had been about six weeks since Claimant submitted her most recent request for an ergonomic chair and an ergonomic evaluation.[5] On February 29, 2016, Claimant had additional injections of steroids, bilaterally at the L4-S1 level.

On her anniversary date in March 2016, Claimant should have been promoted to Deputy City Attorney IV, Step F, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. (She only received her small anniversary step, which is virtually automatic.)

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[5]Claimant's original prescription for an ergonomic chair and request for an evaluation for an ergonomic work station was in early 2011.

Instead, Claimant was stuck in the Deputy City Attorney III, Step G, position, where she had been since March 23, 2007. This failure to promote Claimant was a direct result of her sex and physical disability. Claimant alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step F, or higher.

In March 2016, Claimant began to have a different medical problem. She had been having extremely heavy menstrual periods for years, to the point where she had become anemic in 2012, and underwent an endometrial biopsy, after which she was diagnosed as having a fibroid uterus. The condition worsened, and she saw her gynecologist (Reza Askari, M.D.) on Friday, March 11, 2016. Claimant's hemoglobin was dangerously low because she was bleeding so much, and Dr. Askari admitted Claimant to the hospital that day, and she began taking FMLA/CFRA leave on that day – March 11, 2016. Claimant was given four units of whole blood, and was kept in the hospital over the weekend. She was released on Monday, March 14, 2016. On Thursday, March 17, 2016, Claimant began hemorrhaging and was rushed to the hospital. On March 18, 2016, Claimant underwent an emergency hysterectomy at Providence Little Company of Mary Medical Center in San Pedro. Before she went into surgery, Claimant contacted Respondent BRENTE, Cristina Sarabia, and Wanda Hudson, and advised all of them that she was having emergency surgery, and would need to take FMLA/CFRA leave for an unknown amount of time. Claimant also emailed Kellie Tran (Payroll and Special Funds Administrator) and told her she was having an emergency hysterectomy, and that she had already notified Respondent BRENTE. Kellie Tran emailed Cristina Sarabia and Wanda Hudson with the information the same day.

On March 24, 2016, Cristina Sarabia, Human Resources Director, sent Claimant a memo, advising her that her FMLA/CFRA leave was approved from March 18, 2016 through a date not yet determined. Cristina Sarabia also stated in the March 24, 2016 memo: "During your leave, the Payroll Section of the Los Angeles CITY ATTORNEY'S Office will input the appropriate payroll codes into our office's payroll system (D-Time)."

On April 26, 2016, Claimant's physician completed a medical certification in which he stated that Claimant would not be able to return to work until May 14, 2016, but that she was able to return to "limited work from home" as of April 18, 2016. On or about April 30, 2016, Claimant's physician twice faxed the Certification of Health Care Provider to Wanda Hudson of the Human Resources Department. Despite that, and despite the written assurances in Cristina Sarabia's March 24, 2016 memo, on May 1, 2016, while Claimant was home recovering from surgery, Wanda Hudson sent Claimant an email telling her she was being removed from payroll, effective May 2, 2016. Claimant had a substantial amount of accrued sick leave at this time, which Wanda Hudson knew. The May 1, 2016 email from Wanda Hudson caused added stress, which Claimant alleges contributed to the various physical problems she was having.

Unfortunately, Claimant's problems relating to her hysterectomy were far from over. She experienced an abrupt and extremely severe menopause. Also around this time, she developed severe hypothyroidism, most likely caused by an auto-immune disorder. Claimant became exhausted

and developed rashes and itchiness on her extremities. She was also damp and sweaty on her entire body all the time, which greatly delayed the healing of her incision and caused her to develop a postoperative wound infection. Claimant also had memory loss, difficulty concentrating, and was unable to think or reason at her normal level. She also began requiring about 16 hours of sleep per night. Although Claimant had planned to return to work on May 16, 2016, at least part-time, she was unable to because of the panoply of medical issues she was experiencing. Claimant's FMLA/CFRA leave was therefore continued from May 16, 2016 through June 5, 2016.

Arranging for this FMLA/CFRA leave was an ordeal, because Wanda Hudson repeatedly requested more detailed medical information (to which EMPLOYER Respondents were not entitled) from Claimant's doctor, and threatened Claimant that if she did not provide further medical details, she would be classified as "AWOL." Claimant's doctor had sent a letter dated May 24, 2016, stating that Claimant was able to work from home for up to six hours per day, and that she could return to work on June 5, 2016. As a result of Wanda Hudson's haranguing and threats, on May 26, 2016, Claimant's physician wrote another letter, in which he stated:

> Elizabeth Greenwood is unable to commute to and from the workplace. She is able to work from home for up to six hours a day. As she heals she is able to go out for short outings, but she is unable to be in an office environment for an extended period of time. This restriction is currently until June 5, 2016 and will be reviewed with Ms. Greenwood to see if further restrictions are necessary to maintain and improve her health as she recovers.

Claimant finally returned to work at the office on June 6, 2016. Claimant had voluntarily been doing some work from home starting in mid-April 2016, but was not paid for this time.[6]

When Claimant returned to work at the office on June 6, 2016, she thought that surely by this time, her office would be set up with the new ergonomic chair and the ergonomic equipment which the Occupational Safety and Health Division had recommended four months earlier, in February 2016. Unfortunately, even though Claimant had submitted her most recent request for an ergonomic chair and another for an ergonomic analysis of her office on January 5, 2016, neither the chair nor any of the other equipment had arrived. Therefore, in July 2016, Claimant emailed Wanda Hudson in the Human Resources Department about the fact that five months had passed since she had requested the ergonomic chair and an ergonomic analysis of her office, and she had still not received any of

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[6]Although EMPLOYER Respondents had authorized Claimant to work from home three hours per day from May 3, 2016 through May 14, 2016, Respondent BRENTE never assigned Claimant any work during this period. However, Claimant's secretary would call from time to time and advise Claimant of deadlines and due dates on Claimant's cases (which had not been re-assigned during Claimant's FMLA leave), and Claimant would prepare whatever documents or take whatever action was required to prevent the case from being compromised.

her ergonomic furnishings or equipment. About a week later, several boxes arrived in Claimant's office, but no one ever arrived to set up or install the items. According to the February 16, 2016 report from Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, and the February 16, 2016 email which Daniela Zaccaro sent to Respondent BRENTE, the requesting department supervisor (Respondent BRENTE) should have made arrangements for the equipment to be set up and installed, but he never did so. He did not even manage to get anyone to open the boxes to inventory what had arrived.

Claimant spoke repeatedly with Respondent BRENTE about her back pain and about the symptoms she was having relating to her abrupt menopause, her hormone deficiency, her auto-immune disorder[7], and her hypothyroidism, including having difficulty thinking and concentrating. Claimant described to Respondent BRENTE the things she was doing to try to cope, and kept him updated on her various doctor visits and diagnoses. When she had to be out of the office for medical procedures and appointments, she kept Respondent BRENTE and other staff updated regarding due dates, deadlines, etc. on the cases she was assigned. These conversations occurred from July 2016 through February 2017.

From July 2016 thorough February 2017, Claimant complained repeatedly to Respondent BRENTE about her lumbar spine pain, and about the fact that her ergonomic equipment and furniture were still in boxes in her office (assuming that is actually what the boxes contained). As far as Claimant is aware, Respondent BRENTE did nothing to even arrange for the items to be un-boxed so someone could inventory them – let alone arrange to get them set up and installed.

Because of the complete failure by EMPLOYER Respondents to accommodate Claimant's physical disability, her pain became worse and worse. She was forced to take 34 hours of sick leave in October 2016, then 50 hours of sick leave in November 2016, then 134 hours of sick leave in January 2017. In January 2017, Claimant was prescribed steroids, Norco, Flexeril, Ketorolac injections, Tramadol injections, and a Lidocaine patch for her back pain. Despite all these medications, Claimant was experiencing constant back pain, and was still attempting to deal with the various extreme menopause symptoms (extreme hormone imbalances) she was having. On January 17, 2017, Dr. Proano gave Claimant a prescription for a stand-up desk. Later that day, Claimant gave this prescription to Wanda Hudson in the Human Resources Department and to someone in the Occupational Safety and Health Division of the City Personnel Department.

On January 18, 2017 and again on February 1, 2017, Claimant had selective nerve root blocks at the L5 level and a lumbar epidural steroid injection at the L5-S1 level. In addition to the severe back pain, Claimant was still suffering from the effects of the emergency hysterectomy and abrupt entry

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[7]Around this time, Claimant was diagnosed as having an unspecified auto-immune disorder. She spent about a year trying to get a formal diagnosis concerning which auto-immune disorder she had. She saw an endocrinologist and submitted to numerous tests, but the auto-immune disorder was never formally specified.

into menopause causing an extreme hormone imbalance, as well as the auto-immune disorder and hypothyroidism. Chief among the side effects was the need for Claimant to sleep about 16 hours per night.

Claimant sent an email to Daniela Zaccaro, Ergonomist, Personnel Department, Occupational Safety and Health Division, and they set up a few appointments to meet, but on each of the appointment days Claimant was unable to come to work, because of both the excruciating pain in her lower back, and because of the hormone deficiencies she was dealing with, and which her doctors were still attempting to stabilize.

On January 22, 2017, Claimant received a change (**not** a promotion) from Deputy City Attorney III, Step G, to Deputy City Attorney III, Step 13, in order to convert to the new salary grade system.

On her anniversary date in March 2017, Claimant should have been promoted to Deputy City Attorney IV, Step 10, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. Instead, she received only a small bump from Deputy City Attorney III, Step 13, to Deputy City Attorney III, Step 14. This failure to promote Claimant was a direct result of her sex, her physical disabilities, for taking FMLA/CFRA leave in 2016, and for complaining about this discrimination to Respondent BRENTE and to persons in the Human Resources Department. Claimant complained, among other things, that a male employee with physical disabilities comparable to hers would not be treated so callously. Claimant alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 10, or higher.

In March 2017, as a result of the continued refusal of EMPLOYER Respondents to accommodate Claimant's physical disability, and the exacerbation which was caused by that continued refusal, Claimant was forced to take 24 hours of vacation and 16 hours of sick leave. In April 2017 she was forced to take 46 hours of sick leave. In May 2017 she was forced to take 99 hours of sick leave. Claimant complained to persons in the Human Resources Department that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Claimant asserted that a male employee with disabilities comparable to her disabilities would not be treated so callously as she was being treated.

On June 12, 2017, Respondent BRENTE sent a memorandum to Human Resources, describing the essential job functions of deputy city attorneys working in the Police Litigation Unit (which is where Claimant had been assigned since June 2013). The essential job duties included functions which required a substantial amount of sitting ((or standing) at a desk ((although no time estimate was provided)), and which also required traveling to court and to depositions, carrying, wheeling, lifting, and maneuvering boxes of trial documents, binders, and exhibits, "which are often voluminous." These essential job functions were not consistent with what the job had consisted of in the past, since

clerks, rather than attorneys, took boxes of trial documents, binders, and exhibits to court and back, and did the "carrying, wheeling, lifting, and maneuvering." (Since Claimant's secretary had retired in early 2017, and Claimant was not even assigned a new secretary, the only assistance she received came from the clerks.) This job description with additional "essential job duties" appears to have been designed to make Claimant unqualified for her job, and to punish her for repeatedly requesting that she be treated fairly with regard to promotions, and that she be provided with the reasonable accommodations to which she was legally entitled.

On June 14, 2017, Claimant had to miss some work to undergo more lumbar facet injections in her lower back, bilaterally at the L4-SI level. A week later, on June 21, 2017, Respondent BRENTE began criticizing Claimant for missing work and not working from 8:30 a.m. to 5:00 p.m. Even though Claimant had told Respondent BRENTE about her medical issues in detail (which legally she was not required to do), and had explained to him the reasons why she had to take time off work for so many medical appointments, and had to sleep 12 to 16 hours per night, making it very difficult to arrive at work by 8:30 a.m. and to work for eight hours per day, Respondent BRENTE criticized Claimant for the various issues which he knew were beyond her control because of her medical disabilities. (There was not even any business reason which required Claimant to be physically at the office from 8:30 a.m. to 5:00 p.m.) As a supervisor, and as an attorney, Respondent BRENTE surely knew he was required to reasonably accommodate Claimant's disabilities, and that he should certainly not be disciplining her because of her disabilities.

After the June 21, 2017 meeting with Respondent BRENTE, Claimant submitted a formal request for reasonable accommodations to the Human Resources Department. The meeting regarding Claimant's requested reasonable accommodations took place on July 11, 2017, with David Trujillo (HR Analyst) and Margaret Shikibu, both of the Human Resources Department. The accommodations Claimant was requesting related to her extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, which were requiring her to sleep 12 to 16 hours per night, preventing her from getting to work at 8:30 a.m. on some days, and preventing her from working eight hours per day on some days.

On July 11, 2017, the Human Resources Department granted Claimant a so-called temporary accommodation by changing her schedule to 10:00 a.m. to 6:00 p.m. This was not sufficient, however, since Claimant had to sleep about 12 to 16 hours per night, and work eight hours per day, which adds up to 20 to 24 hours per day, leaving Claimant no time to commute back and forth from San Pedro to downtown, no time to get ready in the morning and eat breakfast, and no time to eat a real dinner in the evening. The so-called accommodation meant that in order to get eight hours in at work, Claimant was forced to work through her lunch break, eating at her desk. While Claimant would normally have taken the opportunity to walk around and stretch during her lunch break, instead, she was forced to remain in place at her desk. Claimant was also forced to work in her office which still did not have the ergonomic improvements which had been requested first in 2011, and then again in January 2016, and some of which had been in unopened boxes in her office since July 2016 (at least, Claimant assumed that is what was in the boxes).

Claimant explained all this to Human Resources Department personnel, but her words fell on deaf ears. From July 23 through August 5, 2017, Claimant was forced to use 82 hours of sick leave and 38.5 hours of vacation as a direct result of the refusal of EMPLOYER Respondents to accommodate her disabilities. Claimant again complained to persons in the Human Resources Department that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Claimant asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

While Claimant was on sick leave, Respondent BRENTE failed to assign another attorney to cover Claimant's cases. As a result, some filing deadlines were missed. When Claimant was informed of filing deadlines, she would download the necessary documents from PACER and draft motions and other documents from home **while she was using her accrued sick leave.** (Claimant sometimes did not know about filing deadlines, however, since she had still not been assigned a secretary ever since her secretary retired in early 2017.)

The so-called temporary accommodation expired on July 28, 2017, because EMPLOYER Respondents required that Claimant submit documentation regarding her auto-immune disorder and hypothyroidism from her doctor (and in fact repeatedly and illegally requested detailed medical information to which EMPLOYER Respondents were not entitled), and Claimant could not get an appointment with the endocrinologist who was on Respondent CITY's health insurance plan until August 2017. In August 2017, Claimant's hormone replacement medication was doubled. Although Claimant was still suffering from other symptoms of extreme hormone deficiency, as well as with the symptoms resulting from her hypothyroidism and her auto-immune disorder, the doubling of her hormone replacement medication allowed her to decrease her sleep time from 12 to 16 hours per night, down to 10 hours per night. While this was still a long time to sleep, it was a definite improvement.

By August 2017, it had been over six years since Claimant first started requesting an ergonomic evaluation, one and one-half years since it was finally performed, over a year since the boxes, presumably containing ergonomic items, were delivered to her office (but never even opened), and seven months since Claimant's doctor prescribed a stand-up desk. Claimant had spent hours talking to and emailing with the Human Resources Department, the Occupational Safety and Health Division of Respondent CITY's Personnel Department, and her supervisor, Respondent BRENTE, but absolutely nothing had been accomplished as far as any reasonable accommodations for Claimant's lumbar disability. The pain in her back was increasing to the point where she was in constant pain, had frequent muscle spasms, and was often unable to drive herself to and from work. She was taking so much pain medication it was adding to the fatigue she was already battling, and made it even more difficult for her to concentrate at work. Therefore, on August 14, 2017, Claimant submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Respondent CITY ATTORNEY'S OFFICE and went out on sick leave.

From August 14 through November 2017, Claimant constantly asked her supervisor, Respondent BRENTE, about her workers' compensation claim, to see when she would receive information regarding her workers' compensation medical leave, and Respondent BRENTE repeatedly told her to continue using her accrued sick leave whenever she was in too much pain to come to work. He also told Claimant that Human Resources told him a workers' compensation claim had not yet been opened for her, even though she had submitted her claim on August 14. Claimant had no reason not to believe him at the time.

Even though she was suffering extreme back pain, from September 26 through 29, 2017, Claimant conducted the trial in *Porter v. City of Los Angeles*, in which she prevailed. (Claimant was also very ill with the flu and was running a fever on September 27, but continued with the trial notwithstanding how ill she felt, because she feared she would be disciplined by her supervisor if she requested a one-day continuance.) Claimant had to have a friend drive her back and forth to court, because driving greatly exacerbated her back pain, and because she also needed the commute time for sleeping.

On October 3, 2017, shortly after completing the trial, Claimant saw Dr. Proano again, and had additional medial nerve branch blocks performed on her lumbar spine. This procedure was repeated on November 1, 2017.

Also in approximately October 2017, Respondent BRENTE asked Claimant why others in the Police Litigation Unit were able to get ergonomic equipment with ease, and she had so much trouble. (For example, a male attorney named Geoff Plowden had requested a reasonable accommodation, which he had promptly received.) This was a harassing comment, since ergonomic equipment had been delivered to Claimant's office in July 2016 and, as the requesting department supervisor, Respondent BRENTE was the very person who should have made arrangements for the equipment to be set up and installed. Incredibly, Respondent BRENTE suggested to Claimant that she install the ergonomic equipment herself which, among other things, would have required drilling a large hole in the desk to attach the monitor arm. Respondent BRENTE seemed to take enjoyment from the fact that Claimant was enduring intense pain, while the ergonomic equipment sat in Claimant's office, still in boxes, taunting her. Claimant told Respondent BRENTE he was harassing and discriminating against her based on her sex and physical disabilities by forcing her to exhaust the vacation and sick leave which she had worked for years to accrue, since obviously it was possible for reasonable accommodations to be provided to male employees in the department – just not to females.

Because Respondent BRENTE never assigned anyone to cover Claimant's cases when she was out on extended sick leave, Claimant returned to work as much as she could, on days the pain was not completely debilitating. She was unable to drive, however, so she could only go to work when she could get a driver, and could only work for a few hours at a time. As a result, she was required to take 76.6 hours of vacation, 9 hours of 100% sick leave, and 27 hours of 75% sick leave during October 2017.

Despite the fact that: i) Claimant had been on FMLA/CFRA leave from approximately March 11

through June 5, 2010 for her spinal surgery, iii) Claimant had been on FMLA/CFRA leave from March 11, 2016 through June 5, 2016 for her endometriosis and fibroid uterus, and then for the emergency hysterectomy and the complications relating to that surgery, iiii) Claimant had communicated constantly with Respondent BRENTE regarding her various physical disabilities, and had answered many more questions regarding the details of her physical disabilities and serious health conditions than she was legally required to, iv) Claimant had been attempting to get ergonomic furniture which would at least lessen her back pain since early 2011, v) Respondent BRENTE was the person responsible for having the ergonomic items installed but the items had been sitting in boxes in Claimant's office since July 2016, vi) Claimant had submitted a formal request for reasonable accommodations to Human Resources and met with Human Resources about this, and vii) Claimant had filed a workers' compensation claim on August 14, 2017, on November 7, 2017, Respondent BRENTE saw fit to issue a formal Notice to Correct Deficiencies to Claimant, which dwelled solely on difficulties she was having at work due to her physical disabilities.[8]

On November 8, 2017, when Claimant was literally at the doctor for the purpose of obtaining a note which Vivienne Swanigan (Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division) had said was required, Claimant received a call, ordering her back to the office to receive her Notice to Correct Deficiencies. The meeting was attended by Respondent BRENTE, Claimant, union representative Oscar Winslow, and a woman (name unknown) from the Personnel or Human Resources Department. During this meeting, Claimant described in detail all the health issues which were making it difficult for her to work regular hours, including the health issues she was having related to her severe menopause (severe hormone imbalance), her auto-immune disorder, her hypothyroidism, and her lumbar spine disability. Claimant explained that much of the time when she was late to work, it was because she required so much sleep because of the extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, or because she was groggy due to having been forced to take pain medication for her lumbar spine disability. She again requested reasonable accommodations for all her physical disabilities. Rather than discuss what reasonable accommodations might be possible, Respondent BRENTE said to Claimant, right in front of Oscar Winslow and the woman from Personnel, "We all know the workers' comp claim is bullshit." This was an accusation of Claimant committing an illegal act (workers' compensation fraud). Claimant pointed out that the Notice to Correct Deficiencies dwelled solely on difficulties she was having at work due to her physical disabilities, and for which she had been requesting reasonable accommodations for seven years, and complained that this constituted harassment and discrimination based on her physical disabilities. Claimant also complained she was being discriminated against and harassed based on her sex because she did not believe male employees were being disciplined for having physical disabilities, and of course male employees did not have menopause issues. Claimant also complained she was being punished for using accrued sick leave, which she only had to use because Respondents refused to provide the

[8]According to the Notice to Correct, Respondent BRENTE accused Claimant of having unsatisfactory job performance from June 21, 2017 through September 29, 2017 – the very day Claimant received a favorable jury verdict in *Portter v. City of Los Angeles*.

reasonable accommodations she required.

At this point, Claimant became suspicious regarding the lack of any action on her workers' compensation claim, so she began to investigate. On November 8, 2017, she finally got in contact with Lisa Herron, ACME Claims Adjuster, who told Claimant her workers' compensation claim had been denied because Respondent BRENTE told Ms. Herron Claimant was not at work, and he did not know how to reach her! This was not true, since Respondent BRENTE knew how to reach Claimant by phone, text message, or email.

By November 26, 2017, Claimant was in such severe back pain that she had to use accrued vacation and sick leave through January 20, 2018. Claimant used various types of accrued leave during this period. While Claimant was on sick leave, Respondent BRENTE again failed to assign sufficient personnel to cover Claimant's cases. Claimant complained to David Trujillo that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Claimant asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated. Claimant also complained to David Trujillo that Respondent BRENTE was harassing and discriminating against her by failing to assign sufficient personnel to cover her cases while she was on sick leave, which caused deadlines and due dates to be missed, for which she was being blamed. Claimant did not work voluntarily from home during this period of vacation and sick leave.[9]

On December 7, 2017, Claimant finally learned from David Trujillo (of the Human Resources Department) that she could reopen her workers' compensation claim by completing and returning some medical release forms, and submitting to an examination by a Qualified Medical Examiner. She returned the signed forms and began arranging for the examination.

On December 13 and 20, 2017, Claimant attempted to undergo a radiofrequency ablation procedure and a facet rhyzotomy, but had a bad reaction to the anesthesia, so the procedures could not be completed on those dates. As a result of her continuing back pain, on December 20, 2017, Claimant's doctor wrote a note stating Claimant was unable to work from November 16, 2017 through January 15, 2018. She was finally able to have the radiofrequency ablation of the right L3-5 medial branch nerves on January 22, 2018.

Claimant had hoped to return to work on January 21, 2018, but was unfortunately unable to return to working full-time on that date. She therefore took intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018. Claimant used accrued vacation and sick leave during this period. Once again, Respondent BRENTE failed to assign sufficient personnel to cover Claimant's cases, and once again Claimant complained to Respondent BRENTE that this constituted

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[9]Claimant was afraid she would be criticized for voluntarily working during her leave since, on November 7, 2017, Respondent BRENTE had issued Claimant a formal Notice to Correct Deficiencies which dwelled solely on difficulties she was having at work due to her physical disabilities.

discrimination and harassment based on her physical disabilities and sex, and for taking FMLA/CFRA leave.

On January 29, 2018, Claimant had her annual medical examination at HealthCare Partners. Among other things, she was diagnosed as having anxiety disorder, depression, hypothyroidism, insomnia, sciatica, vitamin D deficiency, difficulty concentrating, elevated blood pressure, elevated liver enzymes, greater trochanteric bursitis, menopause syndrome, muscle spasms, and neurodermatitis. She was taking numerous prescription medications for these conditions. Claimant was also treating with her gynecologist (who was not part of HealthCare Partners), and was being prescribed hormone replacement and other medications related to her menopause syndrome by the gynecologist.

On February 7, 2018, Claimant's physician (Dr. Proano) wrote a note indicating she was able to return to work on February 12, 2018, but only to "light" work duties, and only with the following restrictions/accommodations: "no bending, stooping, lifting, sit no more than 1 hour, standing no more than 1 hour."

Claimant did return to work, full-time, on February 12, 2018. On that day, she submitted the February 7, 2018 note from Dr. Proano regarding her restrictions, along with the three ergonomic prescriptions from Dr. Proano – one for an ergonomic keyboard drawer, one for an ergonomic chair, and one for a stand-up desk – to the Human Resources Department. The Human Resources Department told Claimant she needed to have **yet another** ergonomics evaluation. It had been **two years** since Claimant had the first ergonomic evaluation, when the Occupational Safety and Health Division had determined that she needed a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. (Those items had never been delivered, or were still in boxes in Claimant's office, needing to be un-boxed and installed.) It had also been **over two years** since Claimant's doctor initially prescribed an ergonomic chair, and **one year** since her doctor had initially prescribed a stand-up desk.

Amazingly, David Trujillo told Claimant it could be **months** before they would be able to get her the ergonomic evaluation. Claimant complained to David Trujillo that there were still boxes of ergonomic equipment in her office which had never been opened and installed. She told David Trujillo that her back would start aching within an hour of her sitting at her desk, and she was afraid sitting in that chair would seriously exacerbate her spinal disability. David Trujillo did not seem interested in getting the ergonomic equipment installed, and said they might have to put Claimant on administrative leave until they could conduct yet another ergonomic evaluation and get the new equipment in place.

On February 14, 2018, in what can only be viewed as an outright refusal to accommodate Claimant's disability, the Human Resources Department sent Claimant an email stating that she would have to completely re-start the ergonomic evaluation process. Claimant reminded Human Resources that she had originally started requesting an ergonomic evaluation process in early 2011, the ergonomic evaluation had finally been performed on February 1, 2016, and, although the boxed ergonomic items were finally delivered to her office in July 2016, none of the equipment had been set up.

Also on February 14, 2018, Claimant met with David Trujillo to discuss accommodation of the work restrictions which were listed on the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). During this meeting, Claimant complained to David Trujillo that Respondent BRENTE and EMPLOYER Respondents were harassing and discriminating against her because of taking FMLA/CFRA leave, and based on her physical disabilities and her sex, for the same reasons as discussed above. On February 23, 2018, David Trujillo sent an email in which he stated that Claimant's request was with "Personnel to see if they had equipment readily available. If not available, she would be placed on the list for them to order."

On February 27, 2018, Claimant drove to Pasadena, where she conducted a six-hour deposition. The combination of driving to Pasadena, sitting for six hours, then driving back to San Pedro greatly exacerbated Claimant's back injury. She could not return to work because her ergonomic furniture and equipment had still not been installed. She attempted to work from home (from February 28, 2018 through March 8, 2018), but this reasonable accommodation was later denied her.

Claimant saw Dr. Askari again on March 7, 2018, and Dr. Askari noted complications of menopause, the presence of thyroid issues, and the presence of an unknown auto-immune disorder.

On March 8, 2018, Respondent BRENTE sent Claimant an email in which he admonished her for not keeping up with her work while she was in excruciating pain and trying to work from home. Since it was clear that EMPLOYER Respondents were not going to provide Claimant with ergonomic furnishings and equipment, and since the reasonable accommodation of working from home was being denied her, Claimant gave up trying to work from home and, on March 12, 2018, notified Human Resources of her need to take FMLA/CFRA leave, beginning (retroactively) on March 8, 2018, and ending on April 9, 2018.

The very next day (on March 13, 2018), her anniversary date step was denied/withheld for one year – something which is virtually unheard of. Since she should have already been a Deputy City Attorney IV, Step 10, at this point, she should have been promoted to Deputy City Attorney IV, Step 11, but was instead trapped at the Deputy City Attorney III, Step 14, level. This refusal to promote Claimant was a direct result of her sex, her physical disabilities, her repeated requests for accommodation, her repeated requests for an interactive dialogue/process, and for her taking FMLA/CFRA leave. Claimant alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 11, or higher.

Also on March 13, 2018, Claimant was examined by Qualified Medical Examiner Leon Brooks, M.D. After reviewing medical records and examining Claimant, Dr. Brooks determined that Claimant was "temporarily totally disabled." He also ordered that Claimant obtain an MRI of her spine, and electrodiagnostic studies.

On March 14, 2018, Claimant's request for FMLA/CFRA leave was approved for the period March

8 through April 9, 2018. Claimant was required to use approximately 168 hours of accrued (75%) sick leave during this period. Claimant again complained to David Trujillo that she was being discriminated against for taking FMLA/CFRA leave and also because of her sex and physical disabilities, by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Claimant asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

Claimant had hoped to return to work on April 10, 2018, as had been planned, but was physically unable to do so. (She attended a LACERS meeting, but was in so much pain afterward, she had to go home.) Claimant missed work on April 11, 2018 due to a death in the family. She returned to work on April 13, 2018. On April 17, 2018, Claimant obtained the MRI which had been ordered by Dr. Brooks (QME). By April 25, 2018, Claimant was in so much pain she could not work. She therefore requested to take a FMLA/CFRA leave of absence, but months went by without her receiving a response.[10] On May 8, 2018, Claimant obtained the electrodiagnostic studies which had been ordered by Dr. Brooks.

On June 8, 2018, David Trujillo told Claimant that her ergonomic equipment (which had first been prescribed by Claimant's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment. David Trujillo gave no indication regarding when the equipment was expected to arrive.

Amazingly, the very next day (June 9, 2018), Claimant's health benefits were terminated without notice, without a response to her April 25, 2018 request to take FMLA/CFRA leave, and without the ergonomic equipment being installed in her office, which would have allowed her to return to work. Claimant received no notice of the termination of her health insurance benefits from EMPLOYER Respondents. Rather, she learned of the termination of benefits from one of her medical providers. EMPLOYER Respondents terminated the health insurance of Claimant, who they knew had numerous health issues, without even giving her notice.

Then on June 12, 2018, even though Claimant had filed a workers' compensation claim on August 14, 2017, and had been declared "temporarily totally disabled" by Dr. Brooks (QME) on March 13, 2018, David Trujillo notified Claimant that she was out of vacation and sick leave and had no more FMLA/CFRA time, so she would need to apply for short-term disability insurance. On June 13, 2018, Claimant asked David Trujillo to send her the paperwork which was necessary to apply for disability insurance. The application paperwork was provided, and Claimant applied for disability insurance on June 13, 2018 with Standard Insurance Company (under the City of Los Angeles group policy). Standard Insurance indicated it would respond by August 3, 2018.

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[10]Eventually, on September 21, 2018, Human Resources sent a letter stating that Claimant was being granted a "personal medical leave of absence . . . as a reasonable accommodation for the continuous period of April 25, 2018 through October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018.

On July 10, 2018, Dr. Brooks (the QME) issued a supplemental report in which he stated the following findings:

- Claimant should be precluded from repeated bending and stooping, lifting of weight in excess of 15 pounds, prolonged sitting or prolonged standing.

- Claimant will not be able to return back to her prior position in view of the physical requirements. He therefore considers her to be a qualified injured worker.

- He believes that 60% of Claimant's present impairment is related to her present injury of August 14, 2017 and 40% is related to her condition prior to the specific injury of August 14, 2017.

- Claimant remains with 8% impairment of the whole person per DRE lumbar category 2 of Table 15-3 page 383 of the AMA Guidelines Fifth Edition.

On July 13, 2018, David Trujillo sent Claimant an email in which he wrote:

> Your department has changed your status to Part Time Intermittent and that is what has cancelled your benefits.
>
> This status automatically cancels benefits by the payroll file provided to our TPA.

Amazingly, although EMPLOYER Respondents had removed Claimant from payroll and terminated her health insurance benefits on June 9, 2018, they did not bother to tell Claimant until over a month later, on July 13, 2018.

When Claimant did not hear anything by August 3, 2018, she contacted Standard Insurance Company and was told her claim was "on hold" because Standard Insurance was waiting for information from EMPLOYER Respondents. Standard Insurance said it had sent Respondent CITY a follow-up, but had still not heard back. Therefore, on August 3, 2018, Claimant wrote to David Trujillo, asking that he inquire into the status of her disability insurance application.

Claimant's disability insurance claim was eventually processed, and was denied by Standard Insurance on September 17, 2018; she is currently in the process of appealing. No progress was made on Claimant's workers' compensation claim during this time.

Claimant's request for a medical leave of absence took **almost five months** – from April 25, 2018 to September 21, 2018 – to be granted, leaving Claimant in fear of her employment being terminated due to her being unable to work as a result of her disabilities. Eventually, on September 21, 2018, Human Resources sent a letter stating that Claimant was being granted a "personal medical leave of absence . . . . as a reasonable accommodation for the continuous period of April 25, 2018 through

October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018, during which time 64 hours of Claimant's accrued vacation and 437 hours of Claimant's accrued sick leave were used. The remainder of the leave time was unpaid. To term this a "personal medical leave of absence . . . as a reasonable accommodation" is inaccurate, since the leave was FMLA/CFRA leave from April 25, 2018 through June 9, 2018, and after that it was unpaid leave without health insurance. This was therefore not a "reasonable accommodation." A true accommodation would have been to actually install the ergonomic equipment and furnishings which Claimant required, so she could be working, getting paid, and receiving health insurance and other benefits of employment.

On October 15, 2018, Claimant's attorneys sent a 35-page letter to Zna Portlock Houston, Special Counsel Personnel Standards and Employee Engagement (Office of the Los Angeles City Attorney), in which they requested a response by November 1, 2018. **To this date, no response has been provided.**

On October 16, 2018, Claimant submitted a complaint to EMPLOYER Respondents' Office of Discrimination Complaint Resolution. In that complaint, Claimant alleged discrimination based on disability and sex, and for taking FMLA/CFRA leave, and further alleged she had been subjected to a variety of harassing and discriminatory treatment, including several adverse employment actions.

On October 16, 2018, Claimant's physician wrote a note stating that she could return to work with the following restrictions/accommodations: "no bending, stooping, standing for more than 1 hour. Stand up desk and ergonomic chair [required]."

Claimant returned to work on October 17, 2018. When she arrived at her office, she discovered that her desk had been set up with two monitors and a soft desk pad for standing (which were both things she needed), but that the electric high-adjustable desk and electric high-adjustable chair which she understood had been ordered, had still not arrived. Claimant had previously submitted a note which Dr. Proano had written on February 7, 2018, indicating she could only perform "light" work duties, and only with the following restrictions/accommodations: "**no bending, stooping, lifting**, sit no more than 1 hour, standing no more than 1 hour." [Emphasis added.] EMPLOYER Respondents were aware of this because, on February 14, 2018, Claimant met with David Trujillo to discuss accommodation of the work restrictions which were identified in the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). Then, on July 10, 2018, Dr. Brooks (EMPLOYER Respondents' designated QME) stated: "Claimant should be precluded from repeated bending and stooping, **lifting of weight in excess of 15 pounds**, prolonged sitting or prolonged standing." EMPLOYER Respondents were therefore well aware that Claimant was unable to raise and lower a stand-up desk and/or stand-up chair manually several times per day, and had a duty to provide Claimant with the electric high-adjustable desk and electric high-adjustable chair which she required in order to be able to perform her job.

On October 17, 2018, Claimant managed to work from 9:00 a.m. to 6:30 p.m., despite the severe back pain she was experiencing. On October 18, Claimant again worked a full day – from 9:45 a.m. to 7:00 p.m. On October 19, the pain was so bad when she awoke, she was not able to drive downtown until after she had been up for a while and had taken more pain medication. She therefore worked from 11:45 a.m. to 5:45 p.m.

Unfortunately, as a result of pushing her body, and working without the benefit of the ergonomic equipment she was supposed to have, Claimant experienced excruciating back pain for the next three days, and was unable to report to work on Monday, October 22, 2018. Her attendance was very sporadic the next couple weeks because of the back pain she was suffering due, at least in part, to the lack of ergonomic furnishings and equipment.

Every day Claimant was late to work, or unable to go to work at all, she texted Respondent BRENTE and advised him of her status. Sometimes he responded, but sometimes he did not. Claimant has told Respondent BRENTE she still needs 10 hours of sleep per day. If she has back spasms, she needs to take a pain pill, and take a hot shower. On mornings the pain is so severe that she has to take two pain pills, then she cannot drive. In late October 2018, Claimant explained to Respondent BRENTE that she was unable to obtain a new note from her doctor, because she was still without health insurance.

Claimant worked full days on October 30 and October 31, 2018. On October 30, 2018, Claimant spoke with one of EMPLOYER Respondents' attorneys regarding her workers' compensation claim. He told Claimant no decision had been made by the workers' compensation insurance carrier regarding the claim she had submitted on August 14, 2017. Despite Dr. Brooks' July 10, 2018 findings, Claimant's workers' compensation claim has still not been processed by EMPLOYER Respondents. This means the payroll department has not credited back Claimant's sick leave and vacation accounts. Claimant has also not been paid any money for her workers' compensation claim, and also has not even been paid for working October 30 and 31, 2018.

On Thursday, November 1, 2018, Claimant became extremely ill, with a very high fever, and was diagnosed as probable Viral Meningitis. Claimant's physician (Terry Ishihara, M.D.) wanted to admit Claimant to the hospital, but she declined to go because of being without health insurance. Claimant could not even have blood tests performed because of the lack of health insurance. Dr. Ishihara advised Claimant that she would need to stay in bed for at least a week, and probably longer. On November 1, 2018, Claimant advised both Respondent BRENTE and HR Analyst David Trujillo that she was sick, that she probably had Viral Meningitis, and that her doctor had advised at least a week of bed rest.

On Monday, November 5, 2018, persons from the Police Litigation Unit started emailing Claimant assignments to do at home. Not only was Claimant very ill, but she did not have any of the files she would need in order to do the work she was being assigned anyway. Claimant notified both the Police Litigation Unit and David Trujillo of these facts.

On November 8, 2018, Claimant learned that her health insurance had been reactivated.[11] Claimant was still very ill at this time. Her fever was not as high as previously, but she was still suffering from fever, headaches, chills, and severe vertigo. On November 20, Claimant's physician said it could take up to two weeks for her to recover from what, at that point, had been diagnosed as Viral Meningitis. Claimant's physician provided her with a note stating she could not return to work until December 3, 2018.

While Claimant was at the doctor on November 20, she had blood drawn for the purpose of testing for Typhus. On November 27, 2018, Claimant learned she had Typhus (specifically, Typhus Fever Group IgG, IgM). Typhus is a very serious disease, which can be fatal if left untreated. Typhus can cause Viral Meningitis. Although Typhus is highly treatable with antibiotics, Claimant could not go to the hospital or even have blood tests until almost three weeks after her symptoms started, because her health insurance had not yet been re-activated (even though she was eligible for re-activation starting October 27, 2018).

Claimant most likely contracted Typhus while working for EMPLOYER Respondents. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los Angeles. There has been a Typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus Zone." Claimant's office is only two blocks outside the Typhus Zone.

On November 29, 2018, Claimant sent an email to Respondent BRENTE, copied to David Trujillo, in which she wrote:

> Given the fact there is a typhus outbreak in Downtown LA I would like to file a workers' compensation claim. Would you please send me the paperwork.
>
> Thank you very much.

David Trujillo replied that he would have "Nancy send over the paperwork." Claimant submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Respondent CITY ATTORNEY'S OFFICE, relating to her Typhus diagnosis, on December 1, 2018. In that document, Claimant wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary

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[11]Claimant was eligible for health insurance starting October 27, 2018, but despite Claimant urging EMPLOYER Respondents to hurry and get her insurance re-activated, Claimant's health insurance was not actually re-activated until November 8, 2018.

care physician phoned me and informed me I tested positive for typhus.

Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Claimant wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

Claimant did not return to work on December 3, 2018, however, because she was on a planned family vacation through December 10, 2018 plus, as it turned out, she was still ill from the Typhus the entire time, so she spent most of the vacation in bed. Claimant planned to return to work on December 11, 2018, but was unable to return for two reasons: 1) She was still suffering from severe vertigo, dizziness, and disequilibrium which are symptoms of Typhus; and 2) She feared contracting Typhus again, since her office is within the Typhus Zone. (Typhus can be contracted repeatedly, and since Claimant has an auto-immune disorder, she is at increased risk for contracting Typhus. In California, an employee is not required to work under hazardous working conditions which present a serious risk of harm.) Although EMPLOYER Respondents had indicated they had sprayed pesticide in Claimant's personal office, the rest of the building had not been fumigated, so Claimant would still not be protected from Typhus-carrying fleas.

On December 20, 2018, when Claimant learned that Respondent CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the Typhus outbreak, and the fact that she contracted Typhus. Claimant has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

Also on December 20, 2018, Claimant saw U.S. HealthWorks Medical Group ("U.S. HealthWorks"), which is the occupational medicine provider designated by EMPLOYER Respondents. The medical provider at U.S. HealthWorks designated Claimant as temporarily totally disabled from December 20 to December 21, 2018, and designated Claimant as temporarily partially disabled from December 21, 2018 through December 28, 2018. On the Injury Status Report, the medical provider wrote: "No Driving." On the Work Status Report, the medical provider wrote: "The patient has been advised not to drive or operate heavy equipment."

Since U.S. HealthWorks was the occupational medicine provider designated by EMPLOYER Respondents, Claimant assumed U.S. HealthWorks would notify EMPLOYER Respondents of her work restriction. (In fact, persons at U.S. HealthWorks **told** Claimant they would notify EMPLOYER Respondents of Claimant's "temporarily partially disabled" status.) Despite this, just to make sure there was no confusion and that her job was protected, on December 21, 2018, Claimant advised EMPLOYER Respondents of this work restriction. In her December 21, 2018 email to David Trujillo, Claimant wrote:

I went to the City doctor last night. He has put me on modified duty. My limitation is that I am unable to drive because of the vertigo. He said they would send you a copy of his report with the restriction. I

go back on 12/27/18 for a follow up. Please let me know what else you need from me.

Respondents' response was swift and sure. Respondents immediately (that same day, **only three hours later**) sent Claimant a letter advising her that she was "absent without leave," and threatening to terminate her. The letter came from HR Analyst David Trujillo, who must know employees are not required to work under hazardous working conditions which present a serious risk of harm.

Claimant went to U.S. HealthWorks again on December 27, 2018, and the medical provider extended Claimant's "temporarily partially disabled" status through January 7, 2019. On the Work Status Report, the medical provider wrote: "The patient has been advised not to drive or operate heavy equipment." Claimant emailed the Work Status Report and Injury Status Report to Respondent BRENTE and David Trujillo on December 28, 2018. Out of an abundance of caution, Claimant's employment law attorney also emailed this report to Vivienne Swanigan (Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division) on January 7, 2019, and again on January 10, 2019.

Meanwhile, on December 31, 2018, Vivienne Swanigan sent a letter in which she acknowledged Claimant's medical reports putting her on leave through December 27, 2018, but ignored the Work Status Report and Injury Status Report Claimant had emailed to Respondent BRENTE and David Trujillo on December 28, 2018, and threatened Claimant's job by stating Claimant was absent without leave. Also in this letter, Vivienne Swanigan (a 33-year attorney, in a very high position in Respondent CITY ATTORNEY'S OFFICE) denied Respondent CITY ATTORNEY'S OFFICE had a duty to reasonably accommodate Claimant's disability of being unable to drive due to her severe vertigo. Also, rather incredibly, Vivienne Swanigan stated that Respondent CITY ATTORNEY'S OFFICE does not have access to Plantiff's workers' compensation case records. Claimant had actually submitted her workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Respondent CITY ATTORNEY'S OFFICE. On the form, Claimant identified her illness as: "Typhus. Headache, fever, chills, stiff neck, rash, vomiting, vertigo, exhaustion."

Claimant again went to U.S. HealthWorks on January 7, 2019, and the medical provider extended Claimant's "temporarily partially disabled" status through January 21, 2019. Again, the restriction was that Claimant was "not to drive or operate heavy machinery." Claimant emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on January 8, 2019. Out of an abundance of caution, Claimant's employment law attorney emailed the documents to Vivienne Swanigan on January 8, 2019, and again on January 11, 2019.

Claimant has requested of David Trujillo, and Claimant's attorney has requested of Vivienne Swanigan, that Claimant's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium which were caused by Typhus be reasonable accommodated. EMPLOYER Respondents have a legal duty to reasonably accommodate Claimant's commute-related limitations.

As of this date, Claimant has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated. Additionally, the electric high-adjustable desk and electric high-adjustable chair which Claimant requires in order to be able to work without extreme pain to her lumbar spine have still not been delivered to her office.

Claimant has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Respondent CITY began fumigating other buildings in October 2018, EMPLOYER Respondents have failed and refused to fumigate City Hall East. Claimant has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting Typhus, but EMPLOYER Respondents have still failed and refused to fumigate City Hall East.

Claimant's paid sick leave bank should have re-loaded on January 1, 2019, which means, after receiving holiday pay for January 1, 2019, Claimant should have received sick leave pay from January 2, 2019 to the present. Claimant has not, however, received any pay for 2019.

Claimant remains under the care of her general physician (Terry Ishihara, M.D.), her pain management doctor (Fabian Proano, M.D.), her gynecologist (Reza Askari, M.D.), and her endocrinologist (Olga Caloff, M.D.).

Claimant is also receiving treatment for her Typhus from medical providers at U.S. HealthWorks. U.S. HealthWorks has advised Claimant to see an infectious disease specialist, but the workers' compensation adjuster has not yet approved this.

CLAIMANT'S LEGAL CLAIMS

Based on the facts set forth above, Claimant is the victim of the following legal violations:

1. Discrimination On the Basis of Physical Disabilities in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(a)]

2. Failure to Engage in the Interactive Process in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(n)]

3. Failure to Accommodate Physical Disabilities in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(m)]

4. Harassment On the Basis of Physical Disabilities in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(j)]

5. Discrimination on the Basis of Sex in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(a)]

6. Harassment on the Basis of Sex in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(j)]

7. Retaliatory Discrimination (Retaliation) in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(h)]

8. Discrimination for Exercising the Right to Medical Leave Pursuant to the California Family Rights Act [Including, specifically, Gov. Code § 12945.2(l)]

9. Interference in Violation of the California Family Rights Act [Including, specifically, Gov. Code § 12945.2(t), and 2 Cal. Code Regs. § 11094]

10. Failure to Take All Reasonable Steps to Prevent Discrimination and Harassment in Violation of the Fair Employment and Housing Act [Including, specifically, Gov. Code § 12940(k)]

PROOF OF SERVICE

I, Deena Kinzer, declare under penalty of perjury that I am over the age of 18 years and not a party to this action, and that on this date I served the individuals listed below with the following documents:

1) Notice of Filing Discrimination Complaint (with the Department of Fair Employment and Housing, Case No. 201901-04788314)

2) Notice of Case Closure and Right to Sue (issued by the Department of Fair Employment and Housing, Case No. 201901-04788314)

3) Complaint of Employment Discrimination Before the State of California Department of Employment and Housing Under the California Fair Employment and Housing Act (Gov. Code §§ 12900, *et seq.*)

Individuals served:

OFFICE OF THE CITY CLERK
200 North Spring Street
Room 395, City Hall
Los Angeles, CA 90012

MICHAEL N. FEUER
c/o OFFICE OF THE LOS ANGELES CITY ATTORNEY
200 N. Main Street, 9th Floor, City Hall East
Los Angeles, CA 90012-4131

OFFICE OF THE LOS ANGELES CITY ATTORNEY
Attn: Vivienne Swanigan, Managing Assistant City Attorney and Supervising Attorney, Labor Relations Division
200 N. Main Street, Room 800, City Hall East
Los Angeles, CA 90012-4131

Service was made by placing a copy in a separate envelope, with postage fully prepaid, addressed to the individual listed above at the address listed above, and depositing it in the U.S. Mail at Torrance, California, via certified mail with return receipt requested. [Gov. Code § 12962(b).]

Executed on January 15, 2019 at Torrance, California.

Deena Kinzer

EXHIBIT 2

TO FIRST AMENDED AND SUPPLEMENTAL COMPLAINT OF ELIZABETH L. GREENWOOD

PROOF OF SERVICE

I, Deena Kinzer, declare under penalty of perjury that I am over the age of 18 years and not a party to this action, and that on this date I served the individuals listed below with the following documents:

1) Notice of Filing Discrimination Complaint (with the Department of Fair Employment and Housing, Case No. 201901-04788314)

2) Notice of Case Closure and Right to Sue (issued by the Department of Fair Employment and Housing, Case No. 201901-04788314)

3) Complaint of Employment Discrimination Before the State of California Department of Employment and Housing Under the California Fair Employment and Housing Act (Gov. Code §§ 12900. *et seq.*)

Individuals served:

OFFICE OF THE CITY CLERK
200 North Spring Street
Room 395, City Hall
Los Angeles, CA 90012

MICHAEL N. FEUER
c/o OFFICE OF THE LOS ANGELES CITY ATTORNEY
200 N. Main Street, 9th Floor, City Hall East
Los Angeles, CA 90012-4131

OFFICE OF THE LOS ANGELES CITY ATTORNEY
Attn: Vivienne Swanigan, Managing Assistant City Attorney and Supervising Attorney, Labor Relations Division
200 N. Main Street, Room 800, City Hall East
Los Angeles, CA 90012-4131

Service was made by placing a copy in a separate envelope, with postage fully prepaid, addressed to the individual listed above at the address listed above, and depositing it in the U.S. Mail at Torrance, California, via certified mail with return receipt requested. [Gov. Code § 12962(b).]

Executed on January 15, 2019 at Torrance, California.

Deena Kinzer

PROOF OF SERVICE

I, Deena Kinzer, declare under penalty of perjury that I am over the age of 18 years and not a party to this action, and that on this date I served the individuals listed below with the following documents:

1) Notice of Filing Discrimination Complaint (with the Department of Fair Employment and Housing, Case No. 201901-04788314)

2) Notice of Case Closure and Right to Sue (issued by the Department of Fair Employment and Housing, Case No. 201901-04788314)

3) Complaint of Employment Discrimination Before the State of California Department of Employment and Housing Under the California Fair Employment and Housing Act (Gov. Code §§ 12900, *et seq.*)

Individuals served:

OFFICE OF THE LOS ANGELES CITY ATTORNEY
Attn: Cory Brente, Supervising Assistant City Attorney
200 N. Main Street, Room 800, City Hall East
Los Angeles, CA 90012-4131

Service was made by placing a copy in a separate envelope, with postage fully prepaid, addressed to the individual listed above at the address listed above, and depositing it in the U.S. Mail at Torrance, California, via certified mail with return receipt requested. [Gov. Code § 12962(b).]

Executed on January 15, 2019 at Torrance, California.

Deena Kinzer

EXHIBIT 3

TO FIRST AMENDED AND SUPPLEMENTAL COMPLAINT OF ELIZABETH L. GREENWOOD

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency — GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING — KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
http://www.dfeh.ca.gov | Email: contact.center@dfeh.ca.gov

March 5, 2019

Janelle Menges
21250 Hawthorne Boulevard
Torrance, California 90503

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201903-05344505
Right to Sue: Greenwood / City of Los Angeles, a municipal corporation et al.

Dear Janelle Menges:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758

(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711

http://www.dfeh.ca.gov | Email: contact.center@dfeh.ca.gov

March 5, 2019

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 201903-05344505
Right to Sue: Greenwood / City of Los Angeles, a municipal corporation et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
http://www.dfeh.ca.gov | Email: contact.center@dfeh.ca.gov

March 5, 2019

Elizabeth Greenwood
1147 Englander Street
San Pedro, California 90731

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201903-05344505
Right to Sue: Greenwood / City of Los Angeles, a municipal corporation et al.

Dear Elizabeth Greenwood,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 5, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of
Elizabeth Greenwood

DFEH No. 201903-05344505

Complainant,

vs.

City of Los Angeles, a municipal corporation
200 N. Main Street, Room 800
Los Angeles, California 90012

Office of the Los Angeles City Attorney, a department of the City of Los Angeles
200 N. Main Street, Room 800
Los Angeles, California 90012

Michael N. Feuer, City Attorney
200 N. Main Street, Room 800
Los Angeles, California 90012

Cory Brente
200 N. Main Street, Room 800
Los Angeles, California 90012

Respondents

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1. Respondent **City of Los Angeles, a municipal corporation** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Elizabeth Greenwood**, resides in the City of **San Pedro** State of **California.**

3. Complainant alleges that on or about **March 5, 2019**, respondent took the following adverse actions:

Date Filed: March 5, 2019

Complainant was harassed because of complainant's sex/gender, family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), other, pregnancy, childbirth, breast feeding, and/or related medical conditions, sexual harassment- hostile environment.

Complainant was discriminated against because of complainant's sex/gender, family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), other, pregnancy, childbirth, breast feeding, and/or related medical conditions, sexual harassment- hostile environment and as a result of the discrimination was denied hire or promotion, reprimanded, denied equal pay, asked impermissible non-job-related questions, denied a work environment free of discrimination and/or retaliation, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), other, denied work opportunities or assignments, denied or forced to transfer.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation, requested or used leave under the california family rights act or fmla (employers of 50 or more people) and as a result was denied hire or promotion, reprimanded, denied equal pay, asked impermissible non-job-related questions, denied a work environment free of discrimination and/or retaliation, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), other, denied or forced to transfer.

Additional Complaint Details: Please see the attached document entitled "Third DFEH Complaint Attachment."

Date Filed: March 5, 2019

VERIFICATION

I, **Janelle Menges**, am the **Attorney** in the above-entitled complaint. I have read the foregoing complaint and know the contents thereof. The matters alleged are based on information and belief, which I believe to be true.

On March 5, 2019, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Torrance, California

Date Filed: March 5, 2019

ATTACHMENT TO
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING COMPLAINT
OF ELIZABETH GREENWOOD

ABBREVIATIONS

Claimant ELIZABETH L. GREENWOOD is referred to herein as "Claimant."

Respondent CITY OF LOS ANGELES is referred to herein as Respondent CITY.

Respondent OFFICE OF THE LOS ANGELES CITY ATTORNEY is referred to herein as "Respondent CITY ATTORNEY'S OFFICE."

Respondent MICHAEL N. FEUER, CITY ATTORNEY is referred to herein as "Respondent FEUER."

Respondent FEUER, Respondent CITY, and Respondent CITY ATTORNEY'S OFFICE may be jointly referred to herein as the "EMPLOYER Respondents."

Respondent CORY BRENTE is referred to herein as"Respondent BRENTE."

FACTS

Plaintiff is a 54-year-old female who has multiple physical disabilities.

Plaintiff has been employed as a Deputy City Attorney with EMPLOYER Defendants since July 1996, when she began as a Deputy City Attorney I, Step A. In May 1998, Plaintiff was assigned to Central Trials. In March 1999, Plaintiff was assigned to the Gangs Unit, where she worked as a prosecutor from 1999 to 2007. In March 2007, Plaintiff was transferred to Homeland Security and promoted to Deputy City Attorney III, Step G (equivalent to Step 13 under the new system). In March 2009, she was transferred to the Neighborhood Prosecutor Program, working as Neighborhood Prosecutor – South Bureau. In that position, Plaintiff attended community meetings and prosecuted projects and issues which were most negatively affecting the area to which she was assigned.

Over the years, Plaintiff has received numerous awards and recognitions from Defendant CITY ATTORNEY'S OFFICE, the Los Angeles Police Department, the Office of the District Attorney, the County of Los Angeles, the California State Senate, the California Legislature Assembly, and Congresswoman Jane Harman. Plaintiff has been positively mentioned in the *Daily Breeze* about 20 times.

Despite the aggressive treatment, Plaintiff's symptoms worsened. By March 2010, she had pain

when sitting at her desk, driving, lifting, carrying, reaching, bending, and squatting. Her diagnosis at that time (by William Dillin, M.D.) was: 1) Lumbar Degenerative Disc Disease, 2) Lumbar Radiculopathy, and 3) Lumbar Disc Herniation. Lumbar spine surgery was recommended. On March 12, 2010, Plaintiff underwent spinal surgery, having: 1) A left L4-L5 Modified Microdiscectomy; 2) A left L4 Hemilaminotomy; and (3) A left L4-L5 Lateral Recess Resection. She was on leave pursuant to the Family and Medical Leave Act ("FMLA") and CFRA for three months, from approximately March 11 through June 5, 2010.

Prior to Plaintiff's surgery and CFRA leave, she had been assigned to the Neighborhood Prosecutor Program – South Bureau, where she interacted with the community and served as a Neighborhood Prosecutor. She enjoyed this job because it involved working with the community and being in court. Plaintiff had an office in the San Pedro City Hall during the time she was a Neighborhood Prosecutor, which worked well since Plaintiff resided in San Pedro.

On September 7, 2010, Plaintiff was transferred to Housing Enforcement because of a request by Mary Clare Molidor. Plaintiff did not want this transfer because, for someone who had been a prosecutor in the Gang Unit, then an attorney in Homeland Security, then a Neighborhood Prosecutor, being transferred to Housing Enforcement was not a forward trajectory for her career path, and was not even a lawyer type of job. However, Mary Clare Molidor told Plaintiff she would continue to be working out of an office in San Pedro (which was of course important to Plaintiff because driving exacerbated her lumbar spine disability), and attempted to convince Plaintiff that even though the position was not really an attorney position, but actually more of a mediator position, once she got into the position, she would like it. At Housing Enforcement, Plaintiff mediated disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance. Although she did not like the job at first, Mary Clare Molidor was right – after Plaintiff performed this job for a while, she came to enjoy it because she thought she was making a difference in peoples' lives.

In September 2010, Plaintiff informed her new supervisor, Jonathan Galatzan (Supervising Attorney, Housing Enforcement), of her lumbar spine disability almost immediately after being transferred to Housing Enforcement. Later in September 2010, Plaintiff told Jonathan Galatzan about the lower back pain she was having, especially when sitting in her desk chair at work. (Plaintiff was working from an office in the San Pedro City Hall at this time, so at least she did not have to spend hours driving.) Over the next few months, Plaintiff repeatedly told Jonathan Galatzan about the pain she was experiencing while sitting, but Defendants failed to initiate a timely, good-faith, interactive process or to do anything else regarding Plaintiff's complaints of pain caused by sitting at her desk.

In early 2011, Roy Simon, M.D. prescribed Plaintiff an anti-inflammatory and a pain medication, and also prescribed that she have an ergonomic chair for work, and that an ergonomic evaluation of her office be conducted. Plaintiff submitted the prescription for the ergonomic chair to the

Human Resources Department, but absolutely no action was taken.[1] Plaintiff continued complaining to Jonathan Galatzan about her ongoing back pain while sitting in her desk chair. She asked him to try to get the Human Resources Department to arrange for the ergonomic evaluation, but he was no help at all.

In fact, rather than attempt to assist Plaintiff in obtaining the ergonomic evaluation, in spring and summer 2011, Jonathan Galatzan began harassing and discriminating against Plaintiff.[2] For example, although Plaintiff was already mediating disputes between landlords and tenants related to landlords allegedly not complying with the Los Angeles Rent Stabilization Ordinance on a city-wide basis (while working from an office in the San Pedro City Hall), Jonathan Galatzan assigned Plaintiff additional work consisting of code violation cases which required her to travel to downtown Los Angeles on a regular basis. This is not what Plaintiff had been assigned to do when Mary Clare Molidor caused Plaintiff to be transferred into Housing Enforcement.[3] Plaintiff did not want this new assignment and did not agree to it. Plaintiff's workload mediating Rent Stabilization Ordinance violations city-wide was a full-time job, and Plaintiff also spent several hours per week in her role as an elected commissioner of the Los Angeles City Employees' Retirement System ("LACERS"). Adding code violation cases not only increased Plaintiff's workload, but required her to spend much more time in downtown Los Angeles, rather than in her office in San Pedro. Also, rather than attempt to assist Plaintiff in obtaining the ergonomic evaluation of her office (which was in San Pedro), Jonathan Galatzan assigned Plaintiff to a work area in downtown Los Angeles which consisted of a desk in a storage closet, which was less ergonomically correct than her office in San Pedro, and with a chair which was even more uncomfortable than her chair in San Pedro. The additional travel of course exacerbated Plaintiff's disability, and she told Jonathan Galatzan this. Jonathan Galatzan nonetheless left the code violation assignments on Plaintiff's storage closet desk.

Throughout summer and fall, 2011, Plaintiff complained to Jonathan Galatzan about how the downtown assignments were exacerbating her lumbar spine disability, due both to the travel and the completely non-ergonomic storage closet office. Jonathan Galatzan responded on October 14, 2011, by issuing a Notice to Correct Deficiencies to Plaintiff, in which he accused her of failing to file four code violation cases on time, even though filing delays had been a longstanding problem within the Housing Enforcement Department for many years before Plaintiff was assigned to the unit. Additionally, the practice in Housing Enforcement was to delay the cases for years, until the owners were able to gather enough money to make the repairs. It was not uncommon for cases to last several

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[1]This was the first of many requests Plaintiff made for reasonable accommodations for her physical disability.

[2]This was the beginning of the harassment and discrimination to which Plaintiff has been subjected because of her physical disability.

[3]Plaintiff's job, as requested by Mary Clare Molidor, Senior Assistant City Attorney in Charge of Safe Neighborhoods, was to mediate and prosecute violations of the City's Rent Stabilization Ordinance. It was not to prosecute families who had scraped together enough money to purchase an apartment building where there had been a previous illegal subdivision.

years. Sometimes when it was clear the owners did not have any money to make repairs, cases lasted so long that the statute of limitations ran. This was happening for years before Plaintiff began to be assigned the code violation cases (in addition to her full-time assignment of mediating Rent Stabilization Ordinance violations).

In approximately November 2011, Jonathan Galatzan was replaced by Donald Cocek. Plaintiff immediately told Donald Cocek about her back injury, about her pain issues, and about her request for an ergonomic evaluation and an ergonomic chair, which she now needed in two offices (San Pedro and downtown). Plaintiff asked whether there was anything Donald Cocek could do to assist in obtaining these items. Rather than assist, however, Donald Cocek took the job of mediating Rent Stabilization Ordinance violations away from Plaintiff, so that she was handling code violation cases exclusively. When Plaintiff asked why he was doing this, Donald Cocek was not able to articulate a reason. Additionally, the non-disabled male attorney to whom the work was assigned did not even want the work. Changing Plaintiff's job so that she was handling code violation cases exclusively meant she was required to travel to downtown Los Angeles five days per week, and sit at a non-ergonomic desk in a non-ergonomic chair in the non-ergonomic storage closet office. These things exacerbated Plaintiff's back pain, and she was in pain 100% of the time she was either at work, or commuting to and from work. During late 2011 and 2012, Plaintiff repeatedly attempted to discuss this with Donald Cocek, but every time Plaintiff tried to talk with Donald Cocek, he stared at Plaintiff's breasts the entire time. (Donald Cocek also stared at Plaintiff's breasts every time she attempted to have a private conversation with him, and even sometimes when other people were present. Plaintiff did not report this sexual harassment, as it paled in comparison to the disability discrimination and harassment she was experiencing at the time, and having been working for Defendant CITY and Defendant CITY ATTORNEY'S OFFICE, sexual harassment was not new to her.)

Donald Cocek also constantly interrogated Plaintiff about the work she was doing for LACERS.[4] It seemed to irritate him that he could not manage all Plaintiff's time. When Plaintiff would inform Donald Cocek regarding when and what she was doing for LACERS, and where she was doing it, he accused her of lying. Donald Cocek even went to Earl Thomas, Chief of Criminal and Special Litigation Division, about this, and Earl Thomas sent Plaintiff a memo on November 9, 2011. In that memo, Earl Thomas acknowledged that Plaintiff had "an obligation to perform fiduciary duties on behalf of LACERS," yet demanded that Plaintiff obtain advance approval from Donald Cocek before performing any of these fiduciary duties. Around this time, Plaintiff applied for a position in San Pedro, but right after she applied, the job requisition was canceled.

Plaintiff's back pain continued to worsen through 2011 and 2012. She repeatedly told Donald Cocek

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[4]Plaintiff is one of seven people who manage LACERS. She was elected to a five-year term in 2009, and re-elected to a second five-year term in 2014. Defendant CITY and Defendant CITY ATTORNEY'S OFFICE pay for Plaintiff's time spent serving LACERS. What Plaintiff is doing in her role as an elected member of the Board of Administration of LACERS is none of Donald Cocek's business, but he frequently interrogated Plaintiff about her work on LACERS, then accused her of lying when she explained what she had been doing.

she was experiencing back pain, and needed an ergonomic evaluation of her office. Plaintiff also called the Human Resources Department during this time, to ask that the ergonomic evaluation (for which she had submitted a prescription in early 2011) be conducted without further delay.

On October 11, 2012, Plaintiff's father died very unexpectedly. The stress of this death exacerbated Plaintiff's back pain, and she was forced to take accrued vacation and sick leave from approximately October 2012 to approximately January 29, 2013. EMPLOYER Defendants were aware of Plaintiff's physical disability because she submitted a February 20, 2013 note from her primary care physician, Terry Ishihara, M.D., to the Human Resources Department. (EMPLOYER Defendants required Plaintiff to submit a note from her physician before they would classify any of her time off as sick leave. Until she provided the note, the time off had been classified as accrued vacation.)

The first day Plaintiff returned to work following her medical leave of absence, Donald Cocek gave Plaintiff a Notice to Correct Deficiencies for failing to file cases which he had assigned to her after she went out on approved leave, and the deadlines for which had passed before she returned from leave. Knowing Plaintiff was out on extended leave, Donald Cocek should have assigned the cases to other attorneys, but he did not. Instead, he kept the cases assigned to Plaintiff and waited for the statutes of limitations to run out in some of the cases, and other deadlines to pass in other cases. Plaintiff refused to sign the Notice to Correct Deficiencies for events which happened while she was on approved leave, and apparently Donald Cocek did not submit it to Personnel, because Plaintiff heard nothing more about it. Donald Cocek later tried to give Plaintiff a Notice to Correct Deficiencies relating to her work as an elected Commissioner of LACERS. Even though Donald Cocek had absolutely no involvement with LACERS, he accused Plaintiff of falsifying her time sheets for the time she was attributing to LACERS responsibilities. Plaintiff filed a grievance, Mary Clare Molidor mediated the matter, and the Notice to Correct Deficiencies went away. Even at the end of the mediation, however, Donald Cocek accused Plaintiff of "fudging" her time sheets. Plaintiff told Mary Clare Molidor she could not work for someone who thought she was a liar. Donald Cocek responded that he did not think Plaintiff was a liar, but that she needed to be honest on her time sheets. Therefore, although the Notice to Correct Deficiencies went away, nothing changed in Donald Cocek's treatment of Plaintiff.

On June 3, 2013, Plaintiff was finally transferred to a position which was commensurate with her many years of experience as a trial attorney. Plaintiff was transferred to the Police Litigation Unit, where she defends multimillion dollar claims against Defendant CITY in both state and federal court trials. Plaintiff's supervisor in the Police Litigation Unit was (and still is) Defendant BRENTE, Supervising Assistant City Attorney, Police Litigation Unit. This position involves longer hours than Plaintiff's previous position, and a significant amount of responsibility, and Plaintiff should have been promoted to at least a Deputy City Attorney IV, Step C, when she was transferred to this position, but she was not, as a direct result of her sex and physical disability. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step C, or higher.

Plaintiff informed Defendant BRENTE of her lumbar spine (musculoskeletal) disability, and of the accommodations she needed for that disability, immediately upon being transferred to the Police Litigation Unit in June 2013.

Although Plaintiff enjoyed the position in the Police Litigation Unit, she continued to suffer constant pain related to her lumbar spine disability. She complained repeatedly to Defendant BRENTE about the need for an ergonomic chair and for an ergonomic evaluation of her office. These complaints lasted through the remainder of 2013 and to the present.

Despite her constant pain and disability-related absences, Plaintiff has been very successful in her position as trial attorney with the Police Litigation Unit. In January 2014, she obtained a total defense verdict in a federal court bench trial (*Gheli Carpaccio v. Sergeant Todd Cataldi, et al.*). In June 2015, she obtained a defense verdict in a federal court jury trial (*Robert S. Markman and Lisa J. Markman v. Det. John Macchiarella, et al.*), and in September 2017, she won another major federal court jury trial (*Raymond Hiawatha Porter v. City of Los Angeles, et al.*) – each time saving Defendant CITY potentially hundreds of thousands of dollars. Plaintiff has in fact **never lost a trial** while in the Police Litigation Unit.

On her anniversary date in March 2014, Plaintiff should have been promoted to Deputy City Attorney IV, Step D, but she was not. (She only received her small anniversary step, which is virtually automatic.) Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step D, or higher.

On her anniversary date in March 2015, Plaintiff should have been promoted to Deputy City Attorney IV, Step E, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. (She only received her small anniversary step, which is virtually automatic.) Instead, she was stuck in the Deputy City Attorney III, Step G, position, where she had been since March 23, 2007. This failure and/or refusal to promote Plaintiff was a direct result of her sex and physical disability. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step E, or higher.

Although Plaintiff was succeeding in the courtroom, she was continuing to experience constant back pain, especially when working at the desk in her office. Her pain when sitting down was so bad that she had family and friends drive her to and from work, and to and from the courthouses. Plaintiff's back pain was so severe that she had to go to the emergency department of San Pedro Hospital on July 7, 2015. On July 8, 2015, Plaintiff reported to her doctor at Kerlan-Jobe that she had pain in her back and left leg which had gotten worse, and that her symptoms worsened as she sat and drove. At the time, she was unable to lift, carry, reach, bend, push, pull, climb, kneel, or squat. She was diagnosed with: 1) Lumbar degenerative disc disease; 2) Lumbar radiculopathy; and 3) Status post lumbar discectomy. Plaintiff continued to complain to Defendant BRENTE about her lumbar spine

disability, and continued to request accommodations as discussed above.

A July 13, 2015 MRI of Plaintiff's lumbar spine showed: 1) Degenerative disc disease at L4-5 with a 2mm left lateral disc bulge/protrusion and contiguous 8x5mm left lateral extrusion effacing the left L5 nerve root; 2) Left laminectomy; 3) Disc desiccation at L5-S1 with a 3mm left lateral disc bulge abutting the left L5 and exiting the left L4 nerve roots; 4) Disc desiccation at L1-2 with a 12x4mm contiguous and superior extrusion abutting the posterior margin of the L1 vertebral body; 5) Mild disc desiccation at L3-4 with mild central canal stenosis due to facet and ligamentum flavum hypertrophy; 6) Disc desiccation at the L2-3 level with a 1.5mm central and right lateral disc bulge; and 7) Possible adenomyosis of the uterus. After that, Plaintiff began seeing Fabian Proano, M.D. for pain management.

Despite the continuous pain she was enduring, Plaintiff continued to prevail at trial. As mentioned above, in June 2015 Plaintiff obtained a defense verdict in a federal court jury trial (***Robert S. Markman and Lisa J. Markman v. Det. John Macchiarella, et al.***). Plaintiff continued trying to work and to deal with her back pain. On August 12, 2015 and again on October 5, 2015, she had a procedure consisting of lumbar selective nerve root blocks at the left L4-L5 level and a lumbar epidural steroid injection at the L4-L5 level.

Having received no response from Defendant BRENTE to her two and one-half years of requests for accommodations for her lumbar spine disability, on January 6, 2016, Plaintiff sent an email to Wanda Hudson in the Human Resources Department, stating that she had two prescriptions – one for an ergonomic chair and another for an ergonomic analysis of her office. Plaintiff explained to Wanda Hudson that she had lower back surgery five years earlier and had a reoccurrence of the problem in June 2015. Plaintiff explained that she was healing slowly and that although her office chair was only a couple years old, after sitting in the chair for a while, she had quite a bit of pain and difficulty standing back up. Plaintiff told Wanda Hudson that she hoped a new ergonomic chair, coupled with an ergonomic analysis of her office, would help. Plaintiff attached the new prescription for her chair to the email and said she could also get the prescription for the ergonomic analysis if needed. Plaintiff copied her supervisor, Defendant BRENTE, on the email to Wanda Hudson and, on January 7, 2016, forwarded the email to Cristina Sarabia, Human Resources Director.

On January 8, 2016, Cristina Sarabia sent an email in which she instructed Plaintiff to submit her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Defendant CITY's Personnel Department. Cristina Sarabia stated that Plaintiff needed to get her supervisor to approve her request (which seems very strange, since her supervisor is not an ergonomics specialist, and had in fact done nothing to facilitate Plaintiff obtaining the ergonomic items up to that point), and that after that happened, an appointment would be scheduled within two to three weeks. Cristina Sarabia further stated that, once the Occupational Safety and Health Division determined what ergonomic items Plaintiff required, the Human Resources Department would work with Plaintiff to get the recommended equipment to her "promptly." Plaintiff immediately submitted her requests for an ergonomic chair and an ergonomic evaluation to the Occupational Safety and Health Division of Defendant CITY's Personnel Department, as directed

by Cristina Sarabia.

An ergonomic evaluation of Plaintiff's workstation was conducted on February 1, 2016. On February 16, 2016, Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, issued a report in which she listed the equipment which Plaintiff required. This included a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. The report provided:

> **The requesting department supervisor or referring agent is responsible for addressing and carrying out the recommendations in this report. This includes ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to the workstation.** For City owned buildings, General Services Division can install some equipment. . . .

[Emphasis added.] Plaintiff's department supervisor was Defendant BRENTE.

Also on February 16, 2016, Daniela Zaccaro sent an email to Defendant BRENTE, Wanda Hudson, and Plaintiff, in which she provided information on possible vendors, and stated:

> **The requesting department supervisor or referring agent is responsible for addressing and carrying out the recommendations in this report. This includes ordering, purchasing, and installing equipment as well as making arrangements for recommended modifications to the workstation.** For City owned buildings, General Services Division can install some equipment. . . .

[Emphasis added.] By this time it had been about six weeks since Plaintiff submitted her most recent request for an ergonomic chair and an ergonomic evaluation.[5]

On February 29, 2016, Plaintiff had additional injections of steroids, bilaterally at the L4-S1 level.

On her anniversary date in March 2016, Plaintiff should have been promoted to Deputy City Attorney IV, Step F, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. (She only received her small anniversary step, which is virtually automatic.) Instead, Plaintiff was stuck in the Deputy City Attorney III, Step G, position, where she had been since March 23, 2007. This failure to promote Plaintiff was a direct result of her sex and physical disability. Plaintiff alleges on information and belief that male, non-disabled attorneys with less

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[5]Plaintiff's original prescription for an ergonomic chair and request for an evaluation for an ergonomic work station was in early 2011.

experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step F, or higher.

In March 2016, Plaintiff began to have a different medical problem. She had been having extremely heavy menstrual periods for years, to the point where she had become anemic in 2012, and underwent an endometrial biopsy, after which she was diagnosed as having a fibroid uterus. The condition worsened, and she saw her gynecologist (Reza Askari, M.D.) on Friday, March 11, 2016. Plaintiff's hemoglobin was dangerously low because she was bleeding so much, and Dr. Askari admitted Plaintiff to the hospital that day, and she began taking FMLA/CFRA leave on that day – March 11, 2016. Plaintiff was given four units of whole blood, and was kept in the hospital over the weekend. She was released on Monday, March 14, 2016. On Thursday, March 17, 2016, Plaintiff began hemorrhaging and was rushed to the hospital. On March 18, 2016, Plaintiff underwent an emergency hysterectomy at Providence Little Company of Mary Medical Center in San Pedro. Before she went into surgery, Plaintiff contacted Defendant BRENTE, Cristina Sarabia, and Wanda Hudson, and advised all of them that she was having emergency surgery, and would need to take FMLA/CFRA leave for an unknown amount of time. Plaintiff also emailed Kellie Tran (Payroll and Special Funds Administrator) and told her she was having an emergency hysterectomy, and that she had already notified Defendant BRENTE. Kellie Tran emailed Cristina Sarabia and Wanda Hudson with the information the same day.

On March 24, 2016, Cristina Sarabia, Human Resources Director, sent Plaintiff a memo, advising her that her FMLA/CFRA leave was approved from March 18, 2016 through a date not yet determined. Cristina Sarabia also stated in the March 24, 2016 memo: "During your leave, the Payroll Section of the Los Angeles CITY ATTORNEY'S Office will input the appropriate payroll codes into our office's payroll system (D-Time)."

On April 26, 2016, Plaintiff's physician completed a medical certification in which he stated that Plaintiff would not be able to return to work until May 14, 2016, but that she was able to return to "limited work from home" as of April 18, 2016. On or about April 30, 2016, Plaintiff's physician twice faxed the Certification of Health Care Provider to Wanda Hudson of the Human Resources Department. Despite that, and despite the written assurances in Cristina Sarabia's March 24, 2016 memo, on May 1, 2016, while Plaintiff was home recovering from surgery, Wanda Hudson sent Plaintiff an email telling her she was being removed from payroll, effective May 2, 2016. Plaintiff had a substantial amount of accrued sick leave at this time, which Wanda Hudson knew. The May 1, 2016 email from Wanda Hudson caused added stress, which Plaintiff alleges contributed to the various physical problems she was having.

Unfortunately, Plaintiff's problems relating to her hysterectomy were far from over. She experienced an abrupt and extremely severe menopause. Also around this time, she developed severe hypothyroidism, most likely caused by an auto-immune disorder. Plaintiff became exhausted and developed rashes and itchiness on her extremities. She was also damp and sweaty on her entire body all the time, which greatly delayed the healing of her incision and caused her to develop a postoperative wound infection. Plaintiff also had memory loss, difficulty concentrating, and was

unable to think or reason at her normal level. She also began requiring about 16 hours of sleep per night. Although Plaintiff had planned to return to work on May 16, 2016, at least part-time, she was unable to because of the panoply of medical issues she was experiencing. Plaintiff's FMLA/CFRA leave was therefore continued from May 16, 2016 through June 5, 2016.

Arranging for this FMLA/CFRA leave was an ordeal, because Wanda Hudson repeatedly requested more detailed medical information (to which EMPLOYER Defendants were not entitled) from Plaintiff's doctor, and threatened Plaintiff that if she did not provide further medical details, she would be classified as "AWOL." Plaintiff's doctor had sent a letter dated May 24, 2016, stating that Plaintiff was able to work from home for up to six hours per day, and that she could return to work on June 5, 2016. As a result of Wanda Hudson's haranguing and threats, on May 26, 2016, Plaintiff's physician wrote another letter, in which he stated:

> Elizabeth Greenwood is unable to commute to and from the workplace. She is able to work from home for up to six hours a day. As she heals she is able to go out for short outings, but she is unable to be in an office environment for an extended period of time. This restriction is currently until June 5, 2016 and will be reviewed with Ms. Greenwood to see if further restrictions are necessary to maintain and improve her health as she recovers.

Plaintiff finally returned to work at the office on June 6, 2016. Plaintiff had voluntarily been doing some work from home starting in mid-April 2016, but was not paid for this time.[6]

When Plaintiff returned to work at the office on June 6, 2016, she thought that surely by this time, her office would be set up with the new ergonomic chair and the ergonomic equipment which the Occupational Safety and Health Division had recommended four months earlier, in February 2016. Unfortunately, even though Plaintiff had submitted her most recent request for an ergonomic chair and another for an ergonomic analysis of her office on January 5, 2016, neither the chair nor any of the other equipment had arrived. Therefore, in July 2016, Plaintiff emailed Wanda Hudson in the Human Resources Department about the fact that five months had passed since she had requested the ergonomic chair and an ergonomic analysis of her office, and she had still not received any of her ergonomic furnishings or equipment. About a week later, several boxes arrived in Plaintiff's office, but no one ever arrived to set up or install the items. According to the February 16, 2016 report from Daniela Zaccaro, Ergonomist with the Occupational Safety and Health Division, and the February 16, 2016 email which Daniela Zaccaro sent to Defendant BRENTE, the requesting department supervisor (Defendant BRENTE) should have made arrangements for the equipment to

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[6]Although EMPLOYER Defendants had authorized Plaintiff to work from home three hours per day from May 3, 2016 through May 14, 2016, Defendant BRENTE never assigned Plaintiff any work during this period. However, Plaintiff's secretary would call from time to time and advise Plaintiff of deadlines and due dates on Plaintiff's cases (which had not been re-assigned during Plaintiff's FMLA leave), and Plaintiff would prepare whatever documents or take whatever action was required to prevent the case from being compromised.

be set up and installed, but he never did so. He did not even manage to get anyone to open the boxes to inventory what had arrived.

Plaintiff spoke repeatedly with Defendant BRENTE about her back pain and about the symptoms she was having relating to her abrupt menopause, her hormone deficiency, her auto-immune disorder[7], and her hypothyroidism, including having difficulty thinking and concentrating. Plaintiff described to Defendant BRENTE the things she was doing to try to cope, and kept him updated on her various doctor visits and diagnoses. When she had to be out of the office for medical procedures and appointments, she kept Defendant BRENTE and other staff updated regarding due dates, deadlines, etc. on the cases she was assigned. These conversations occurred from July 2016 through February 2017.

From July 2016 thorough February 2017, Plaintiff complained repeatedly to Defendant BRENTE about her lumbar spine pain, and about the fact that her ergonomic equipment and furniture were still in boxes in her office (assuming that is actually what the boxes contained). As far as Plaintiff is aware, Defendant BRENTE did nothing to even arrange for the items to be un-boxed so someone could inventory them – let alone arrange to get them set up and installed.

Because of the complete failure by EMPLOYER Defendants to accommodate Plaintiff's physical disability, her pain became worse and worse. She was forced to take 34 hours of sick leave in October 2016, then 50 hours of sick leave in November 2016, then 134 hours of sick leave in January 2017. In January 2017, Plaintiff was prescribed steroids, Norco, Flexeril, Ketorolac injections, Tramadol injections, and a Lidocaine patch for her back pain. Despite all these medications, Plaintiff was experiencing constant back pain, and was still attempting to deal with the various extreme menopause symptoms (extreme hormone imbalances) she was having. On January 17, 2017, Dr. Proano gave Plaintiff a prescription for a stand-up desk. Later that day, Plaintiff gave this prescription to Wanda Hudson in the Human Resources Department and to someone in the Occupational Safety and Health Division of the City Personnel Department.

On January 18, 2017 and again on February 1, 2017, Plaintiff had selective nerve root blocks at the L5 level and a lumbar epidural steroid injection at the L5-S1 level. In addition to the severe back pain, Plaintiff was still suffering from the effects of the emergency hysterectomy and abrupt entry into menopause causing an extreme hormone imbalance, as well as the auto-immune disorder and hypothyroidism. Chief among the side effects was the need for Plaintiff to sleep about 16 hours per night.

Plaintiff sent an email to Daniela Zaccaro, Ergonomist, Personnel Department, Occupational Safety and Health Division, and they set up a few appointments to meet, but on each of the appointment days Plaintiff was unable to come to work, because of both the excruciating pain in her lower back,

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[7]Around this time, Plaintiff was diagnosed as having an unspecified auto-immune disorder. She spent about a year trying to get a formal diagnosis concerning which auto-immune disorder she had. She saw an endocrinologist and submitted to numerous tests, but the auto-immune disorder was never formally specified.

and because of the hormone deficiencies she was dealing with, and which her doctors were still attempting to stabilize.

On January 22, 2017, Plaintiff received a change (not a promotion) from Deputy City Attorney III, Step G, to Deputy City Attorney III, Step 13, in order to convert to the new salary grade system.

On her anniversary date in March 2017, Plaintiff should have been promoted to Deputy City Attorney IV, Step 10, but she was not, since she had never even been promoted to the Deputy City Attorney IV position. Instead, she received only a small bump from Deputy City Attorney III, Step 13, to Deputy City Attorney III, Step 14. This failure to promote Plaintiff was a direct result of her sex, her physical disabilities, for taking FMLA/CFRA leave in 2016, and for complaining about this discrimination to Defendant BRENTE and to persons in the Human Resources Department. Plaintiff complained, among other things, that a male employee with physical disabilities comparable to hers would not be treated so callously. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience, who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 10, or higher.

In March 2017, as a result of the continued refusal of EMPLOYER Defendants to accommodate Plaintiff's physical disability, and the exacerbation which was caused by that continued refusal, Plaintiff was forced to take 24 hours of vacation and 16 hours of sick leave. In April 2017 she was forced to take 46 hours of sick leave. In May 2017 she was forced to take 99 hours of sick leave. Plaintiff complained to persons in the Human Resources Department that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee with disabilities comparable to her disabilities would not be treated so callously as she was being treated.

On June 12, 2017, Defendant BRENTE sent a memorandum to Human Resources, describing the essential job functions of deputy city attorneys working in the Police Litigation Unit (which is where Plaintiff had been assigned since June 2013). The essential job duties included functions which required a substantial amount of sitting (or standing) at a desk (although no time estimate was provided), and which also required traveling to court and to depositions, carrying, wheeling, lifting, and maneuvering boxes of trial documents, binders, and exhibits, "which are often voluminous." These essential job functions were not consistent with what the job had consisted of in the past, since support staff, rather than attorneys, took boxes of trial documents, binders, and exhibits to court and back, and did the "carrying, wheeling, lifting, and maneuvering." (Since Plaintiff's secretary had retired in early 2017, and Plaintiff was not even assigned a new secretary, the only assistance she received came from the clerks.) This job description with additional "essential job duties" appears to have been designed to make Plaintiff unqualified for her job, and to punish her for repeatedly requesting that she be treated fairly with regard to promotions, and that she be provided with the reasonable accommodations to which she was legally entitled.

On June 14, 2017, Plaintiff had to miss some work to undergo more lumbar facet injections in her lower back, bilaterally at the L4-SI level. A week later, on June 21, 2017, Defendant BRENTE began criticizing Plaintiff for missing work and not working from 8:30 a.m. to 5:00 p.m. Even though Plaintiff had told Defendant BRENTE about her medical issues in detail (which legally she was not required to do), and had explained to him the reasons why she had to take time off work for so many medical appointments, and had to sleep 12 to 16 hours per night, making it very difficult to arrive at work by 8:30 a.m. and to work for eight hours per day, Defendant BRENTE criticized Plaintiff for the various issues which he knew were beyond her control because of her medical disabilities. (There was not even any business reason which required Plaintiff to be physically at the office from 8:30 a.m. to 5:00 p.m.) As a supervisor, and as an attorney, Defendant BRENTE surely knew he was required to reasonably accommodate Plaintiff's disabilities, and that he should certainly not be disciplining her because of her disabilities.

After the June 21, 2017 meeting with Defendant BRENTE, Plaintiff submitted a formal request for reasonable accommodations to the Human Resources Department. The meeting regarding Plaintiff's requested reasonable accommodations took place on July 11, 2017, with David Trujillo (HR Analyst) and Margaret Shikibu, both of the Human Resources Department. The accommodations Plaintiff was requesting related to her extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, which were requiring her to sleep 12 to 16 hours per night, preventing her from getting to work at 8:30 a.m. on some days, and preventing her from working eight hours per day on some days.

On July 11, 2017, the Human Resources Department granted Plaintiff a so-called temporary accommodation by changing her schedule to 10:00 a.m. to 6:00 p.m. This was not sufficient, however, since Plaintiff had to sleep about 12 to 16 hours per night, and work eight hours per day, which adds up to 20 to 24 hours per day, leaving Plaintiff no time to commute back and forth from San Pedro to downtown, no time to get ready in the morning and eat breakfast, and no time to eat a real dinner in the evening. The so-called accommodation meant that in order to get eight hours in at work, Plaintiff was forced to work through her lunch break, eating at her desk. While Plaintiff would normally have taken the opportunity to walk around and stretch during her lunch break, instead, she was forced to remain in place at her desk. Plaintiff was also forced to work in her office which still did not have the ergonomic improvements which had been requested first in 2011, and then again in January 2016, and some of which had been in unopened boxes in her office since July 2016 (at least, Plaintiff assumed that is what was in the boxes).

Plaintiff explained all this to Human Resources Department personnel, but her words fell on deaf ears. From July 23 through August 5, 2017, Plaintiff was forced to use 82 hours of sick leave and 38.5 hours of vacation as a direct result of the refusal of EMPLOYER Defendants to accommodate her disabilities. Plaintiff again complained to persons in the Human Resources Department that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue, rather than being provided with the reasonable accommodations which would enable her to work. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was

being treated.

While Plaintiff was on sick leave, Defendant BRENTE failed to assign another attorney to cover Plaintiff's cases. As a result, some filing deadlines were missed. When Plaintiff was informed of filing deadlines, she would download the necessary documents from PACER and draft motions and other documents from home **while she was using her accrued sick leave.** (Plaintiff sometimes did not know about filing deadlines, however, since she had still not been assigned a secretary ever since her secretary retired in early 2017.)

The so-called temporary accommodation expired on July 28, 2017, because EMPLOYER Defendants required that Plaintiff submit documentation regarding her auto-immune disorder and hypothyroidism from her doctor (and in fact repeatedly and illegally requested detailed medical information to which EMPLOYER Defendants were not entitled), and Plaintiff could not get an appointment with the endocrinologist who was on Defendant CITY's health insurance plan until August 2017. In August 2017, Plaintiff's hormone replacement medication was doubled. Although Plaintiff was still suffering from other symptoms of extreme hormone deficiency, as well as with the symptoms resulting from her hypothyroidism and her auto-immune disorder, the doubling of her hormone replacement medication allowed her to Decrease her sleep time from 12 to 16 hours per night, down to 10 hours per night. While this was still a long time to sleep, it was a definite improvement.

By August 2017, it had been over six years since Plaintiff first started requesting an ergonomic evaluation, one and one-half years since it was finally performed, over a year since the boxes, presumably containing ergonomic items, were delivered to her office (but never even opened), and seven months since Plaintiff's doctor prescribed a stand-up desk. Plaintiff had spent hours talking to and emailing with the Human Resources Department, the Occupational Safety and Health Division of Defendant CITY's Personnel Department, and her supervisor, Defendant BRENTE, but absolutely nothing had been accomplished as far as any reasonable accommodations for Plaintiff's lumbar disability. The pain in her back was increasing to the point where she was in constant pain, had frequent muscle spasms, and was often unable to drive herself to and from work. She was taking so much pain medication it was adding to the fatigue she was already battling, and made it even more difficult for her to concentrate at work. Therefore, on August 14, 2017, Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE and went out on sick leave.

From August 14 through November 2017, Plaintiff constantly asked her supervisor, Defendant BRENTE, about her workers' compensation claim, to see when she would receive information regarding her workers' compensation medical leave, and Defendant BRENTE repeatedly told her to continue using her accrued sick leave whenever she was in too much pain to come to work. He also told Plaintiff that Human Resources told him a workers' compensation claim had not yet been opened for her, even though she had submitted her claim on August 14. Plaintiff had no reason not to believe him at the time.

Even though she was suffering extreme back pain, from September 26 through 29, 2017, Plaintiff conducted the trial in *Porter v. City of Los Angeles*, in which she prevailed. (Plaintiff was also very ill with the flu and was running a fever on September 27, but continued with the trial notwithstanding how ill she felt, because she feared she would be disciplined by her supervisor if she requested a one-day continuance.) Plaintiff had to have a friend drive her back and forth to court, because driving greatly exacerbated her back pain, and because she also needed the commute time for sleeping.

On October 3, 2017, shortly after completing the trial, Plaintiff saw Dr. Proano again, and had additional medial nerve branch blocks performed on her lumbar spine. This procedure was repeated on November 1, 2017.

Also in approximately October 2017, Defendant BRENTE asked Plaintiff why others in the Police Litigation Unit were able to get ergonomic equipment with ease, and she had so much trouble. (For example, a male attorney named Geoff Plowden had requested a reasonable accommodation, which he had promptly received.) This was a harassing comment, since ergonomic equipment had been delivered to Plaintiff's office in July 2016 and, as the requesting department supervisor, Defendant BRENTE was the very person who should have made arrangements for the equipment to be set up and installed. Incredibly, Defendant BRENTE suggested to Plaintiff that she install the ergonomic equipment herself which, among other things, would have required drilling a large hole in the desk to attach the monitor arm. Defendant BRENTE seemed to take enjoyment from the fact that Plaintiff was enduring intense pain, while the ergonomic equipment sat in Plaintiff's office, still in boxes, taunting her. Plaintiff told Defendant BRENTE he was harassing and discriminating against her based on her sex and physical disabilities by forcing her to exhaust the vacation and sick leave which she had worked for years to accrue, since obviously it was possible for reasonable accommodations to be provided to male employees in the department – just not to females.

Because Defendant BRENTE never assigned anyone to cover Plaintiff's cases when she was out on extended sick leave, Plaintiff returned to work as much as she could, on days the pain was not completely debilitating. She was unable to drive, however, so she could only go to work when she could get a driver, and could only work for a few hours at a time. As a result, she was required to take 76.6 hours of vacation, 9 hours of 100% sick leave, and 27 hours of 75% sick leave during October 2017.

Despite the fact that: i) Plaintiff had been on FMLA/CFRA leave from approximately March 11 through June 5, 2010 for her spinal surgery, ii) Plaintiff had been on FMLA/CFRA leave from March 11, 2016 through June 5, 2016 for her endometriosis and fibroid uterus, and then for the emergency hysterectomy and the complications relating to that surgery, iii) Plaintiff had communicated constantly with Defendant BRENTE regarding her various physical disabilities, and had answered many more questions regarding the details of her physical disabilities and serious health conditions than she was legally required to, iv) Plaintiff had been attempting to get ergonomic furniture which would at least lessen her back pain since early 2011, v) Defendant BRENTE was the person responsible for having the ergonomic items installed but the items had been sitting in boxes in

Plaintiff's office since July 2016, vi) Plaintiff had submitted a formal request for reasonable accommodations to Human Resources and met with Human Resources about this, and vii) Plaintiff had filed a workers' compensation claim on August 14, 2017, on November 7, 2017, Defendant BRENTE saw fit to issue a formal Notice to Correct Deficiencies to Plaintiff, which dwelled **solely** on difficulties she was having at work due to her physical disabilities.[8]

On November 8, 2017, when Plaintiff was literally at the doctor for the purpose of obtaining a note which Vivienne Swanigan (Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division) had said was required, Plaintiff received a call, ordering her back to the office to receive her Notice to Correct Deficiencies. The meeting was attended by Defendant BRENTE, Plaintiff, union representative Oscar Winslow, and a woman (name unknown) from the Personnel or Human Resources Department. During this meeting, Plaintiff described in detail all the health issues which were making it difficult for her to work regular hours, including the health issues she was having related to her severe menopause (severe hormone imbalance), her auto-immune disorder, her hypothyroidism, and her lumbar spine disability. Plaintiff explained that much of the time when she was late to work, it was because she required so much sleep because of the extreme menopause-related issues (extreme hormone imbalances), hypothyroidism, and un-categorized auto-immune disorder, or because she was groggy due to having been forced to take pain medication for her lumbar spine disability. She again requested reasonable accommodations for all her physical disabilities. Rather than discuss what reasonable accommodations might be possible, Defendant BRENTE said to Plaintiff, right in front of Oscar Winslow and the woman from Personnel, "We all know the workers' comp claim is bullshit." This was an accusation of Plaintiff committing an illegal act (workers' compensation fraud).[9] Plaintiff pointed out that the Notice to Correct Deficiencies dwelled **solely** on difficulties she was having at work due to her physical disabilities, and for which she had been requesting reasonable accommodations for seven years, and complained that this constituted harassment and discrimination based on her physical disabilities. Plaintiff also complained she was being discriminated against and harassed based on her sex because she did not believe male employees were being disciplined for having physical disabilities, and of course male employees did not have menopause issues. Plaintiff also complained she was being punished for using accrued sick leave, which she only had to use because Defendants refused to provide the reasonable accommodations she required.

At this point, Plaintiff became suspicious regarding the lack of any action on her workers' compensation claim, so she began to investigate. On November 8, 2017, she finally got in contact with Lisa Herron, ACME Claims Adjuster, who told Plaintiff her workers' compensation claim had been denied because Defendant BRENTE told Ms. Herron Plaintiff was not at work, and he did not

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[8]According to the Notice to Correct, Defendant BRENTE accused Plaintiff of having unsatisfactory job performance from June 21, 2017 through September 29, 2017 – the very day Plaintiff received a favorable jury verdict in *Porter v. City of Los Angeles*.

[9]Plaintiff actually prevailed in that workers' compensation claim, so apparently it was not "bullshit."

know how to reach her! This was not true, since Defendant BRENTE knew how to reach Plaintiff by phone, text message, or email.

By November 26, 2017, Plaintiff was in such severe back pain that she had to use accrued vacation and sick leave through January 20, 2018. Plaintiff used various types of accrued leave during this period. While Plaintiff was on sick leave, Defendant BRENTE again failed to assign sufficient personnel to cover Plaintiff's cases. Plaintiff complained to David Trujillo that she was being discriminated against based on her sex and physical disabilities by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated. Plaintiff also complained to David Trujillo that Defendant BRENTE was harassing and discriminating against her by failing to assign sufficient personnel to cover her cases while she was on sick leave, which caused deadlines and due dates to be missed, for which she was being blamed. Plaintiff did not work voluntarily from home during this period of vacation and sick leave.[10]

On September 7, 2017, Plaintiff finally learned from David Trujillo (of the Human Resources Department) that she could reopen her workers' compensation claim by completing and returning some medical release forms, and submitting to an examination by a Qualified Medical Examiner. She returned the signed forms and began arranging for the examination.

On September 13 and 20, 2017, Plaintiff attempted to undergo a radiofrequency ablation procedure and a facet rhyzotomy, but had a bad reaction to the anesthesia, so the procedures could not be completed on those dates. As a result of her continuing back pain, on September 20, 2017, Plaintiff's doctor wrote a note stating Plaintiff was unable to work from November 16, 2017 through January 15, 2018. She was finally able to have the radiofrequency ablation of the right L3-5 medial branch nerves on January 22, 2018.

Plaintiff had hoped to return to work on January 21, 2018, but was unfortunately unable to return to working full-time on that date. She therefore took intermittent FMLA/CFRA leave from January 21, 2018 through February 11, 2018. Plaintiff used accrued vacation and sick leave during this period. Once again, Defendant BRENTE failed to assign sufficient personnel to cover Plaintiff's cases, and once again Plaintiff complained to Defendant BRENTE that this constituted discrimination and harassment based on her physical disabilities and sex, and for taking FMLA/CFRA leave.

On January 29, 2018, Plaintiff had her annual medical examination at HealthCare Partners. Among other things, she was diagnosed as having anxiety disorder, depression, hypothyroidism, insomnia, sciatica, vitamin D deficiency, difficulty concentrating, elevated blood pressure, elevated liver enzymes, greater trochanteric bursitis, menopause syndrome, muscle spasms, and neurodermatitis.

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[10] Plaintiff was afraid she would be criticized for voluntarily working during her leave since, on November 7, 2017, Defendant BRENTE had issued Plaintiff a formal Notice to Correct Deficiencies which dwelled solely on difficulties she was having at work due to her physical disabilities.

She was taking numerous prescription medications for these conditions. Plaintiff was also treating with her gynecologist (who was not part of HealthCare Partners), and was being prescribed hormone replacement and other medications related to her menopause syndrome by the gynecologist.

On February 7, 2018, Plaintiff's physician (Dr. Proano) wrote a note indicating she was able to return to work on February 12, 2018, but only to "light" work duties, and only with the following restrictions/accommodations: "no bending, stooping, lifting, sit no more than 1 hour, standing no more than 1 hour."

Plaintiff did return to work, full-time, on February 12, 2018. On that day, she submitted the February 7, 2018 note from Dr. Proano regarding her restrictions, along with the three ergonomic prescriptions from Dr. Proano – one for an ergonomic keyboard drawer, one for an ergonomic chair, and one for a stand-up desk – to the Human Resources Department. The Human Resources Department told Plaintiff she needed to have **yet another** ergonomics evaluation. It had been **two years** since Plaintiff had the first ergonomic evaluation, when the Occupational Safety and Health Division had determined that she needed a chair with a tailbone cut-out, a document holder, a monitor arm, and an adjustable footstool. (Those items had never been delivered, or were still in boxes in Plaintiff's office, needing to be un-boxed and installed.) It had also been **over two years** since Plaintiff's doctor initially prescribed an ergonomic chair, and **one year** since her doctor had initially prescribed a stand-up desk.

Amazingly, David Trujillo told Plaintiff it could be **months** before they would be able to get her the ergonomic evaluation. Plaintiff complained to David Trujillo that there were still boxes of ergonomic equipment in her office which had never been opened and installed. She told David Trujillo that her back would start aching within an hour of her sitting at her desk, and she was afraid sitting in that chair would seriously exacerbate her spinal disability. David Trujillo did not seem interested in getting the ergonomic equipment installed, and said they might have to put Plaintiff on administrative leave until they could conduct yet another ergonomic evaluation and get the new equipment in place.

On February 14, 2018, in what can only be viewed as an outright refusal to accommodate Plaintiff's disability, the Human Resources Department sent Plaintiff an email stating that she would have to completely re-start the ergonomic evaluation process. Plaintiff reminded Human Resources that she had originally started requesting an ergonomic evaluation process in early 2011, the ergonomic evaluation had finally been performed on February 1, 2016, and, although the boxed ergonomic items were finally delivered to her office in July 2016, none of the equipment had been set up.

Also on February 14, 2018, Plaintiff met with David Trujillo to discuss accommodation of the work restrictions which were listed on the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). During this meeting, Plaintiff complained to David Trujillo that Defendant BRENTE and EMPLOYER Defendants were harassing and discriminating against her because of taking FMLA/CFRA leave, and based on her physical disabilities and her sex, for the same reasons as

discussed above. On February 23, 2018, David Trujillo sent an email in which he stated that Plaintiff's request was with "Personnel to see if they had equipment readily available. If not available, she would be placed on the list for them to order."

On February 27, 2018, Plaintiff drove to Pasadena, where she conducted a six-hour deposition. The combination of driving to Pasadena, sitting for six hours, then driving back to San Pedro greatly exacerbated Plaintiff's back injury. She could not return to work because her ergonomic furniture and equipment had still not been installed. She attempted to work from home (from February 28, 2018 through March 8, 2018), but this reasonable accommodation was later denied her.

Plaintiff saw Dr. Askari again on March 7, 2018, and Dr. Askari noted complications of menopause, the presence of thyroid issues, and the presence of an unknown auto-immune disorder.

On March 8, 2018, Defendant BRENTE sent Plaintiff an email in which he admonished her for not keeping up with her work while she was in excruciating pain and trying to work from home. Since it was clear that EMPLOYER Defendants were not going to provide Plaintiff with ergonomic furnishings and equipment, and since the reasonable accommodation of working from home was being denied her, Plaintiff gave up trying to work from home and, on March 12, 2018, notified Human Resources of her need to take FMLA/CFRA leave, beginning (retroactively) on March 8, 2018, and ending on April 9, 2018.

The very next day (on March 13, 2018), her anniversary date step was denied/withheld for one year – something which is virtually unheard of. Since she should have already been a Deputy City Attorney IV, Step 10, at this point, she should have been promoted to Deputy City Attorney IV, Step 11, but was instead trapped at the Deputy City Attorney III, Step 14, level. This refusal to promote Plaintiff was a direct result of her sex, her physical disabilities, her repeated requests for accommodation, her repeated requests for an interactive dialogue/process, and for her taking FMLA/CFRA leave. Plaintiff alleges on information and belief that male, non-disabled attorneys with less experience who were performing substantially similar or even less complex and less demanding work, were promoted to ranks of Deputy City Attorney IV, Step 11, or higher.

Also on March 13, 2018, Plaintiff was examined by Qualified Medical Examiner Leon Brooks, M.D. After reviewing medical records and examining Plaintiff, Dr. Brooks determined that Plaintiff was "temporarily totally disabled." He also ordered that Plaintiff obtain an MRI of her spine, and electrodiagnostic studies.

On March 14, 2018, Plaintiff's request for FMLA/CFRA leave was approved for the period March 8 through April 9, 2018. Plaintiff was required to use approximately 168 hours of accrued (75%) sick leave during this period. Plaintiff again complained to David Trujillo that she was being discriminated against for taking FMLA/CFRA leave and also because of her sex and physical disabilities, by being forced to exhaust the vacation and sick leave which she had worked for years to accrue. Plaintiff asserted that a male employee with physical disabilities comparable to hers would not be treated so callously as she was being treated.

Plaintiff had hoped to return to work on April 10, 2018, as had been planned, but was physically unable to do so. (She attended a LACERS meeting, but was in so much pain afterward, she had to go home.) Plaintiff missed work on April 11, 2018 due to a death in the family. She returned to work on April 13, 2018. On April 17, 2018, Plaintiff obtained the MRI which had been ordered by Dr. Brooks (QME). By April 25, 2018, Plaintiff was in so much pain she could not work. She therefore requested to
take a FMLA/CFRA leave of absence, but months went by without her receiving a response.[11] On May 8, 2018, Plaintiff obtained the electrodiagnostic studies which had been ordered by Dr. Brooks.

On June 8, 2018, David Trujillo told Plaintiff that her ergonomic equipment (which had first been prescribed by Plaintiff's doctor **seven years** earlier) had been "ordered," and that Human Resources was awaiting shipment. David Trujillo gave no indication regarding when the equipment was expected to arrive.

Amazingly, the very next day (June 9, 2018), Plaintiff's health benefits were terminated without notice, without a response to her April 25, 2018 request to take FMLA/CFRA leave, and without the ergonomic equipment being installed in her office, which would have allowed her to return to work. Plaintiff received no notice of the termination of her health insurance benefits from EMPLOYER Defendants. Rather, she learned of the termination of benefits from one of her medical providers. EMPLOYER Defendants terminated the health insurance of Plaintiff, who they knew had numerous health issues, without even giving her notice.

Then on June 12, 2018, even though Plaintiff had filed a workers' compensation claim on August 14, 2017, and had been Declared "temporarily totally disabled" by Dr. Brooks (QME) on March 13, 2018, David Trujillo notified Plaintiff that she was out of vacation and sick leave and had no more FMLA/CFRA time, so she would need to apply for short-term disability insurance. On June 13, 2018, Plaintiff asked David Trujillo to send her the paperwork which was necessary to apply for disability insurance. The application paperwork was provided, and Plaintiff applied for disability insurance on June 13, 2018 with Standard Insurance Company (under the City of Los Angeles group policy). Standard Insurance indicated it would respond by August 3, 2018.

On July 10, 2018, Dr. Brooks (the QME) issued a supplemental report in which he stated the following findings:

- Plaintiff should be precluded from repeated bending and stooping, lifting of weight in excess of 15 pounds, prolonged sitting or prolonged standing.
- Plaintiff will not be able to return back to her prior position in view of the physical requirements. He therefore considers her to be a qualified injured worker.

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[11] Eventually, on September 21, 2018, Human Resources sent a letter stating that Plaintiff was being granted a "personal medical leave of absence . . . as a reasonable accommodation for the continuous period of April 25, 2018 through October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018.

- He believes that 60% of Plaintiff's present impairment is related to her present injury of August 14, 2017 and 40% is related to her condition prior to the specific injury of August 14, 2017.
- Plaintiff remains with 8% impairment of the whole person per DRE lumbar category 2 of Table 15-3 page 383 of the AMA Guidelines Fifth Edition.

On July 13, 2018, David Trujillo sent Plaintiff an email in which he wrote:

> Your department has changed your status to Part Time Intermittent and that is what has cancelled your benefits.
>
> This status automatically cancels benefits by the payroll file provided to our TPA.

Amazingly, although EMPLOYER Defendants had removed Plaintiff from payroll and terminated her health insurance benefits on June 9, 2018, they did not bother to tell Plaintiff until over a month later, on July 13, 2018.

When Plaintiff did not hear anything by August 3, 2018, she contacted Standard Insurance Company and was told her claim was "on hold" because Standard Insurance was waiting for information from EMPLOYER Defendants. Standard Insurance said it had sent Defendant CITY a follow-up, but had still not heard back. Therefore, on August 3, 2018, Plaintiff wrote to David Trujillo, asking that he inquire into the status of her disability insurance application.

Plaintiff's disability insurance claim was eventually processed, and was denied by Standard Insurance on September 17, 2018; she is currently in the process of appealing. No progress was made on Plaintiff's workers' compensation claim during this time.

Plaintiff's request for a medical leave of absence took **almost five months** – from April 25, 2018 to September 21, 2018 – to be granted, leaving Plaintiff in fear of her employment being terminated due to her being unable to work as a result of her disabilities. Eventually, on September 21, 2018, Human Resources sent a letter stating that Plaintiff was being granted a "personal medical leave of absence . . . as a reasonable accommodation for the continuous period of April 25, 2018 through October 16, 2018." Payroll records indicate this leave was classified as FMLA/CFRA leave from April 25, 2018 through June 9, 2018, during which time 64 hours of Plaintiff's accrued vacation and 437 hours of Plaintiff's accrued sick leave were used. The remainder of the leave time was unpaid. To term this a "personal medical leave of absence . . . as a reasonable accommodation" is inaccurate, since the leave was FMLA/CFRA leave from April 25, 2018 through June 9, 2018, and after that it was unpaid leave without health insurance. This was therefore not a "reasonable accommodation." A true accommodation would have been to actually install the ergonomic equipment and furnishings which Plaintiff required, so she could be working, getting paid, and receiving health insurance and other benefits of employment.

On October 15, 2018, Plaintiff's attorneys sent a 36-page letter to Zma Pontlock Houston, Special Counsel Personnel Standards and Employee Engagement (Office of the Los Angeles City Attorney), in which they requested a response by November 1, 2018. **To this date, no response has been provided.**

On October 16, 2018, Plaintiff submitted a complaint to EMPLOYER Defendants' Office of Discrimination Complaint Resolution. In that complaint, Plaintiff alleged discrimination based on disability and sex, and for taking FMLA/CFRA leave, and further alleged she had been subjected to a variety of harassing and discriminatory treatment, including several adverse employment actions.

On October 16, 2018, Plaintiff's physician wrote a note stating that she could return to work with the following restrictions/accommodations: "no bending, stooping, standing for more than 1 hour. Stand up desk and ergonomic chair [required]."

Plaintiff returned to work on October 17, 2018. When she arrived at her office, she discovered that her desk had been set up with two monitors and a soft desk pad for standing (which were both things she needed), but that the electric high-adjustable desk and electric high-adjustable chair which she understood had been ordered, had still not arrived. Plaintiff had previously submitted a note which Dr. Proano had written on February 7, 2018, indicating she could only perform "light" work duties, and only with the following restrictions/accommodations: "**no** bending, stooping, **lifting**, sit no more than 1 hour, standing no more than 1 hour." [Emphasis added.] EMPLOYER Defendants were aware of this because, on February 14, 2018, Plaintiff met with David Trujillo to discuss accommodation of the work restrictions which were identified in the February 7, 2018 note from her doctor (no bending, stooping, or lifting; no sitting for more than an hour at a time and no standing for more than an hour at a time). Then, on July 10, 2018, Dr. Brooks (EMPLOYER Defendants' designated QME) stated: "Plaintiff should be precluded from repeated bending and stooping, **lifting of weight in excess of 15 pounds**, prolonged sitting or prolonged standing." EMPLOYER Defendants were therefore well aware that Plaintiff was unable to raise and lower a stand-up desk and/or stand-up chair manually several times per day, and had a duty to provide Plaintiff with the electric high-adjustable desk and electric high-adjustable chair which she required in order to be able to perform her job.

On October 17, 2018, Plaintiff managed to work from 9:00 a.m. to 6:30 p.m., despite the severe back pain she was experiencing. On October 18, Plaintiff again worked a full day – from 9:45 a.m. to 7:00 p.m. On October 19, the pain was so bad when she awoke, she was not able to drive downtown until after she had been up for a while and had taken more pain medication. She therefore worked from 11:45 a.m. to 5:45 p.m.

Unfortunately, as a result of pushing her body, and working without the benefit of the ergonomic equipment she was supposed to have, Plaintiff experienced excruciating back pain for the next three days, and was unable to report to work on Monday, October 22, 2018. Her attendance was very sporadic the next couple weeks because of the back pain she was suffering due, at least in part, to the lack of ergonomic furnishings and equipment.

Every day Plaintiff was late to work, or unable to go to work at all, she texted Defendant BRENTE and advised him of her status. Sometimes he responded, but sometimes he did not. Plaintiff has told Defendant BRENTE she still needs 10 hours of sleep per day. If she has back spasms, she needs to take a pain pill, and take a hot shower. On mornings the pain is so severe that she has to take two pain pills, then she cannot drive. In late October 2018, Plaintiff explained to Defendant BRENTE that she was unable to obtain a new note from her doctor, because she was still without health insurance.

Plaintiff worked full days on October 30 and October 31, 2018. On October 30, 2018, Plaintiff spoke with one of EMPLOYER Defendants' attorneys regarding her workers' compensation claim. He told Plaintiff no Decision had been made by the workers' compensation insurance carrier regarding the claim she had submitted on August 14, 2017. Despite Dr. Brooks' July 10, 2018 findings, Plaintiff's workers' compensation claim has still not been processed by EMPLOYER Defendants. This means the payroll department has not credited back Plaintiff's sick leave and vacation accounts. Plaintiff has also not been paid any money for her workers' compensation claim, and also has not even been paid for working October 30 and 31, 2018.

On Thursday, November 1, 2018, Plaintiff became extremely ill, with a very high fever, and was diagnosed as probable Viral Meningitis. Plaintiff's physician (Terry Ishihara, M.D.) wanted to admit Plaintiff to the hospital, but she Declined to go because of being without health insurance. Plaintiff could not even have blood tests performed because of the lack of health insurance. Dr. Ishihara advised Plaintiff that she would need to stay in bed for at least a week, and probably longer. On November 1, 2018, Plaintiff advised both Defendant BRENTE and HR Analyst David Trujillo that she was sick, that she probably had Viral Meningitis, and that her doctor had advised at least a week of bed rest.

On Monday, November 5, 2018, persons from the Police Litigation Unit started emailing Plaintiff assignments to do at home. Not only was Plaintiff very ill, but she did not have any of the files she would need in order to do the work she was being assigned anyway. Plaintiff notified both the Police Litigation Unit and David Trujillo of these facts.

On November 8, 2018, Plaintiff learned that her health insurance had been reactivated.[12] Plaintiff was still very ill at this time. Her fever was not as high as previously, but she was still suffering from fever, headaches, chills, and severe vertigo. On November 20, Plaintiff's physician said it could take up to two weeks for her to recover from what, at that point, had been diagnosed as Viral Meningitis. Plaintiff's physician provided her with a note stating she could not return to work until December 3, 2018.

While Plaintiff was at the doctor on November 20, she had blood drawn for the purpose of testing

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[12]Plaintiff was eligible for health insurance starting October 27, 2018, but despite Plaintiff urging EMPLOYER Defendants to hurry and get her insurance re-activated, Plaintiff's health insurance was not actually re-activated until November 8, 2018.

for Typhus. On November 27, 2018, Plaintiff learned she had Typhus (specifically, Typhus Fever Group IgG, IgM). Typhus is a very serious disease, which can be fatal if left untreated. Typhus can cause Viral Meningitis. Although Typhus is highly treatable with antibiotics, Plaintiff could not go to the hospital or even have blood tests until almost three weeks after her symptoms started, because her health insurance had not yet been re-activated (even though she was eligible for re-activation starting October 27, 2018).

Plaintiff most likely contracted Typhus while working for EMPLOYER Defendants. Typhus is transmitted by fleas and is believed to have started in the homeless encampments in downtown Los Angeles. There has been a Typhus epidemic in downtown Los Angeles since about September 2018. The county designated a 279-acre area bounded by Third, Seventh, Alameda, and Spring streets as the "Typhus Zone." Plaintiff's office is only two blocks outside the Typhus Zone.

On November 29, 2018, Plaintiff sent an email to Defendant BRENTE, copied to David Trujillo, in which she wrote:

> Given the fact there is a typhus outbreak in Downtown LA I would like to file a workers' compensation claim. Would you please send me the paperwork.
> Thank you very much.

David Trujillo replied that he would have "Nancy send over the paperwork." Plaintiff submitted a workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE, relating to her Typhus diagnosis, on December 1, 2018. In that document, Plaintiff wrote:

> There is a typhus outbreak in downtown LA. Sometime the week of 10/16/18 while at my office I was bitten by one or more fleas. On November 1, 2018, I became violently ill. On 11/27/18, my primary care physician phoned me and informed me I tested positive for typhus.

Under "What can the City of Los Angeles do to help prevent similar accidents/incidents?" Plaintiff wrote "Fumigate City Hall East for fleas-immediately. This is a horrible condition."

Plaintiff did not return to work on December 3, 2018, however, because she was on a planned family vacation through December 10, 2018 plus, as it turned out, she was still ill from the Typhus the entire time, so she spent most of the vacation in bed, with intermittent fevers and with severe headaches. Plaintiff planned to return to work on December 11, 2018, but was unable to return for two reasons: 1) She was still suffering from severe vertigo, dizziness, and disequilibrium which are symptoms of Typhus; and 2) She feared contracting Typhus again, since her office is within two blocks of the Typhus Zone. (Typhus can be contracted repeatedly, and since Plaintiff has an auto-immune disorder, she is at increased risk for contracting Typhus. In California, an employee is not required to work under hazardous working conditions which present a serious risk of harm.) Although EMPLOYER Defendants had indicated they had sprayed pesticide in Plaintiff's personal

office, the rest of the building had not been fumigated, so Plaintiff would still not be protected from Typhus-carrying fleas.

On December 9, 2018, Plaintiff learned that her health insurance had been changed from Anthem, to Kaiser Permanente, without anyone even giving her any notice of this change. (Plaintiff found out when she attempted to get a prescription refilled at the pharmacy.)

On December 20, 2018, when Plaintiff learned that Defendant CITY was not planning to fumigate the City Hall East Building, she made a complaint to the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regarding the Typhus outbreak, and the fact that she contracted Typhus. Also on December 20, 2018, Cal/OSHA sent a letter to Defendant CITY ATTORNEY'S OFFICE, notifying it that a complaint had been filed and giving it five days to respond. Plaintiff has been informed and therefore believes that Cal/OSHA has begun an investigation into her complaint.

Also on December 20, 2018, Plaintiff saw U.S. HealthWorks Medical Group ("U.S. HealthWorks"), which is the occupational medicine provider designated by EMPLOYER Defendants. The medical provider at U.S. HealthWorks designated Plaintiff as temporarily totally disabled from December 20 to December 21, 2018, and designated Plaintiff as temporarily partially disabled from December 21, 2018 through December 28, 2018. On the Injury Status Report, the medical provider wrote: "No Driving." On the Work Status Report, the medical provider wrote: "The patient has been advised not to drive or operate heavy equipment."

Since U.S. HealthWorks was the occupational medicine provider designated by EMPLOYER Defendants, Plaintiff assumed U.S. HealthWorks would notify EMPLOYER Defendants of her work restriction. (In fact, persons at U.S. HealthWorks told Plaintiff they would notify EMPLOYER Defendants of Plaintiff's "temporarily partially disabled" status.) Despite this, just to make sure there was no confusion and that her job was protected, on December 21, 2018, Plaintiff advised EMPLOYER Defendants of this work restriction. In her December 21, 2018 email to David Trujillo, Plaintiff wrote:

> I went to the City doctor last night. He has put me on modified duty. My limitation is that I am unable to drive because of the vertigo. He said they would send you a copy of his report with the restriction. I go back on 12/27/18 for a follow up. Please let me know what else you need from me.

Defendants' response was swift and sure. Defendants immediately (that same day, only three hours later) sent Plaintiff a letter advising her that she was "absent without leave," and threatening to terminate her. The letter came from HR Analyst David Trujillo, who must know employees are not required to work under hazardous working conditions which present a serious risk of harm.

Plaintiff went to U.S. HealthWorks again on December 27, 2018, and the medical provider extended

Plaintiff's "temporarily partially disabled" status through January 7, 2019. On the Work Status Report, the medical provider wrote: "The patient has been advised not to drive or operate heavy equipment." Plaintiff emailed the Work Status Report and Injury Status Report to Defendant BRENTE and David Trujillo on December 28, 2018. In her December 28, 2018 email, Plaintiff advised both David Trujillo and Defendant BRENTE that she was available to work from home. (To date, she has not been assigned any work.) Out of an abundance of caution, Plaintiff's employment law attorney also emailed the December 27, 2018 reports from U.S. HealthWorks to Vivienne Swanigan (Managing Assistant City Attorney and Supervising Attorney of the Labor Relations Division) on January 7, 2019, and again on January 10, 2019.

Meanwhile, on December 31, 2018, Vivienne Swanigan sent a letter in which she acknowledged Plaintiff's medical reports putting her on leave through December 27, 2018, but ignored the Work Status Report and Injury Status Report Plaintiff had emailed to Defendant BRENTE and David Trujillo on December 28, 2018, and threatened Plaintiff's job by stating Plaintiff was absent without leave. Also in this letter, Vivienne Swanigan (a 33-year attorney, in a very high position in Defendant CITY ATTORNEY'S OFFICE) denied Defendant CITY ATTORNEY'S OFFICE had a duty to reasonably accommodate Plaintiff's disability of being unable to drive due to her severe vertigo. Also, rather incredibly, Vivienne Swanigan stated that Defendant CITY ATTORNEY'S OFFICE does not have access to Plaintiff's workers' compensation case records. Plaintiff had actually submitted her workers' compensation Employee's Report of Injury/Illness to the Human Resources Department within Defendant CITY ATTORNEY'S OFFICE. On the form, Plaintiff identified her illness as: "Typhus. Headache, fever, chills, stiff neck, rash, vomiting, vertigo, exhaustion." Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the December 31, 2018 letter.

Plaintiff again went to U.S. HealthWorks on January 7, 2019, and the medical provider extended Plaintiff's "temporarily partially disabled" status through January 21, 2019. Again, the restriction was that Plaintiff was "not to drive or operate heavy machinery." Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on January 8, 2019. Out of an abundance of caution, Plaintiff's employment law attorney emailed the documents to Vivienne Swanigan on January 8, 2019, and again on January 11, 2019. When Plaintiff went to U.S. HealthWorks on January 21, 2019, this same restriction was continued through January 28, 2019. Again, Plaintiff emailed the reports from U.S. HealthWorks to David Trujillo, and Plaintiff's attorney sent them to Vivienne Swanigan.

On January 1, 2019, Plaintiff's health insurance was once again terminated.

In early January 2019, Plaintiff contacted the Los Angeles County Vector Control District and advised them that she had contracted Typhus while working at City Hall East.

On January 17, 2019, all named Defendants were served with Plaintiff's Department of Fair Employment and Housing Complaint (which she had filed on January 14, 2019). At Defendant CITY ATTORNEY'S OFFICE, the Complaint was received by Vivienne Swanigan.

Also on January 17, 2019, Vivienne Swanigan sent a letter stating that there was "no staff, no equipment, no authorization, and no funds" and "no plan" to fumigate City Hall East. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 17, 2019 letter.

It was (and is) the position of Plaintiff and her attorney that EMPLOYER Defendants have a legal duty to reasonably accommodate Plaintiff's commute-related limitations. Plaintiff repeatedly requested of David Trujillo, and Plaintiff's attorney repeatedly requested of Vivienne Swanigan, that Plaintiff's disability of not being able to drive because of the vertigo, dizziness, and disequilibrium which were caused by Typhus be reasonably accommodated. One such communication was in a January 22, 2019 letter from Plaintiff's attorney to Vivienne Swanigan. Vivienne Swanigan's response, in a letter dated January 25, 2019, was that she would not be communicating with Plaintiff's attorney any further. Plaintiff alleges based on information and belief that Defendant FEUER directed Vivienne Swanigan to send the January 25, 2019 letter.

Also on January 25, 2019, Plaintiff filed the original Complaint in this action.

Plaintiff again went to U.S. HealthWorks on January 28, 2019, and the medical provider extended Plaintiff's "temporarily partially disabled" status through February 11, 2019. Again, the Work Status Report stated that Plaintiff was "not to drive or operate heavy machinery." The Work Status Report further stated: "In the event that your employee has restrictions and no modified work is made available, employer must keep employee off work unless, and until, such modified work is made available." Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on January 28, 2019, and Plaintiff's employment law attorney emailed the documents to Vivienne Swanigan on January 28, 2019.

On January 29, 2019, Plaintiff was interviewed by Joel Grover of NBC 4 local news regarding her Typhus. On January 30, 2019, EMPLOYER Defendants were contacted by Joel Grover for comment.

The next day, on January 31, 2019, David Trujillo sent an email to Plaintiff in which he stated "driving or operating heavy equipment" were not "essential functions" of Plaintiff's Deputy City Attorney position, and that Plaintiff was expected to report for work on Monday, February 4, 2019. In fact, Defendant BRENTE had stated in his June 12, 2017 memo titled "Essential Functions of Deputy City Attorneys in Police Litigation Unit":

> It should be noted that taking and defending depositions often involves travel both in southern California and across the United States . . . . the duties include defending the case at trial, which involves travel to and from court (by walking or car) . . . . While most of the cases are venued in downtown Los Angeles, some federal cases are assigned to the Santa Ana and Riverside courthouses, and some superior court cases are assigned to the San Fernando Valley or

other branch courthouses.

Plaintiff alleges that this January 31, 2019 order that she report for work was in retaliation both for Plaintiff filing and serving her DFEH Complaint and for her speaking to the media about contracting Typhus at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed that the January 31, 2019 order for Plaintiff to report to work be made.

Also on January 31, 2019, Plaintiff appeared on NBC Channel 4 News at 11:00 p.m. where she spoke about the Typhus she had contracted while working at City Hall East.

On February 1, 2019, Plaintiff sent an email to David Trujillo, in reply to his January 31, 2019 email ordering her to report to work. In her email, Plaintiff stated, among other things:

> The conditions in City Hall East are a threat to the health of City employees and to the public health. The City Attorney's office has been contacted by CalOSHA about the threat to public health and has ignored their letter. From my understanding, the City Attorney has not even notified other departments that a City Attorney employee contracted typhus at City Hall East. No one has notified the Mayor's office.
>
> The fact the City Attorney has known of this health threat since November 2018; known that a City employee has been diagnosed with typhus since December 2018; was contacted by Cal/OSHA December 20, 2018; has my medical records proving I have Typhus since January 10, 2019; and has done nothing about protecting the employees or the public entering the building is obscene. The City Attorney has not even notified others in the building that an employee was infected so they know of their exposure there or they can take precautions. I would also add that the rat problem at City Hall East is not new. This has been going on for years, and the City and the City Attorney's Office allowed the infestation to get so out of control that people are being exposed to a disease which is most often associated with devastating epidemics from the Middle Ages.
>
> I have been employed by the City Attorney's Office for over 22 years, and am being treated like the trash which is lining the streets around City Hall East. I seriously doubt a male who is a 22-year deputy city attorney and contracted Typhus on the job would be treated as I have been and am being treated. I should not be surprised, though, as this discrimination on the basis of sex has been consistent behavior by the City Attorney's Office over the years.
>
> I implore the City and the City Attorney's Office to protect the City

> employees, clients, co-counsel and opposing counsel, witnesses, contractors, and the public from this public health crisis you are allowing to continue.

Also on February 1, 2019, EMPLOYER Defendants were served with the Complaint in this matter.

Also on February 1, 2019, Plaintiff was featured in the *Daily Mail* in an article called "LA City Hall Official Is the Latest Struck by Typhus in the City's Raging Epidemic." The article reads, "Liz believes the rats that nestle in the building's trash were carrying fleas that transmitted the disease." The article further reads: "She has yet to go back to work, and is calling on the city to fumigate the building before she does 'because I thought I was going to die.'"

On February 4, 2019, Plaintiff was interviewed on John and Ken (KFI AM 640 Radio and Podcast) and she spoke at length about the Typhus outbreak, about the fact that she had contracted Typhus while working at City Hall East, and about the fact that Defendant CITY and Defendant CITY ATTORNEY'S OFFICE had refused to fumigate.

On or about February 5, 2019, Plaintiff told Oscar Winslow, President of the Los Angeles City Attorneys Association (LACAA), about her Typhus diagnosis. Mr. Winslow was very surprised, since no one at Defendant CITY ATTORNEY'S OFFICE had told its employees anything about protecting themselves from Typhus-carrying fleas. Something as simple as advising employees to wear boots would have provided them a small amount of protection.

On February 6, 2019 (only three workdays after EMPLOYER Defendants were served with the Complaint in this matter, and within days of Plaintiff speaking to various media about contracting Typhus while working at City Hall East) David Trujillo sent Plaintiff an email notifying her that she was expected to report to her new supervisor Julie San Juan at her new work location at the Pacific Office, Criminal Branch (11701 S. La Cienega Boulevard, Los Angeles 90045) on February 11 (even though Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "not to drive or operate heavy machinery" through February 11, 2019). In this position, Plaintiff would be handling misdemeanor arraignments at the Pacific Office, Criminal Branch. A change in assignment from working in the Police Litigation Unit, where she was defending Defendant CITY in million dollar cases, to a position handling misdemeanor arraignments (which is an entry-level job) was humiliating and demeaning. This was clearly a change to an inferior position, with much less status than the position Plaintiff had held with the Police Litigation Unit, and was therefore an involuntary and wrongful demotion. Additionally, this demotion did nothing to address the accommodation Plaintiff needed relating to her inability to drive due to vertigo caused by the Typhus. Plaintiff alleges that this February 6, 2019 demotion was in direct retaliation for her continued complaining, both internally and to the media, about the Typhus epidemic and, specifically, at City Hall East. Plaintiff further alleges on information and belief that Defendant FEUER directed Plaintiff's demotion from working in the Police Litigation Unit to handling misdemeanor arraignments at the LAX courthouse for the Pacific Office, Criminal Branch.

On February 7, 2019, Plaintiff appeared on the Channel 5 11:00 a.m. News, on the Channel 11 News at 1:00 p.m., and on John and Ken (on KFI AM 640 Radio and Podcast) at 3:00 p.m..

Also on February 7, 2019, Plaintiff was featured in an article in the *Los Angeles Times* titled "L.A. City Hall, overrun with rats, might remove all carpets amid typhus fears." This article discusses the rat infestation at City Hall and a proposition to remove all of the carpet from City Hall and the adjoining buildings. Plaintiff was featured in the article and was quoted as saying:

> I am actually terrified of entering the building again until they do something" and "that carpet is years old—and, more than likely, it has fleas and flea eggs in it" and "I would really like to see the building fumigated for both rats and fleas . . . I hope they don't wait.

Also on February 7, 2019, Plaintiff was featured on KTLA (Channel 5), again speaking out about the Typhus epidemic and about the fact that she contracted Typhus while working at City Hall East. That same day, Plaintiff was featured on the front page of the *Daily Breeze*, in an article titled "Deputy LA City Attorney in San Pedro goes public with typhus bout prompting City Hall to take notice."

The very next day (February 8, 2019), knowing Plaintiff had previously submitted documents from U.S. HealthWorks stating that she was "temporarily partially disabled" and was "**not to drive** or operate heavy machinery" **through February 11, 2019**, David Trujillo sent Plaintiff an email with instructions regarding where she was to **park on February 11**, when she reported for her new (demoted) assignment handling misdemeanor arraignments at the Pacific Office, Criminal Branch. Plaintiff replied via email, stating:

> We are preparing a response to your sudden and unexpected change demotion in my job to an entry level assignment I have not done in over 20 years. The airport courthouse is not accessed by train and will require a two mile walk and three separate bus rides. It is more complicated than City Hall East. Further, as you are aware since you have had the document for two weeks, I have a doctor's appointment at US HealthWorks in downtown at 1:30 in the afternoon. Is someone driving me there and back? You should know the appointments may take up to 4 hours. I will have to leave the airport shortly after arrival in order to make my appointment if you are expecting me to take public transportation.
>
> I am wondering if this demotion is until OSHA clears the building and I am able to enter without putting my life at risk.

On Saturday, February 9, 2019, Plaintiff was mentioned in an article in the *Los Angeles Times* titled "L.A. officials target vermin at City Hall." On Sunday, February 10, 2019, Plaintiff was featured in an article on the front page of the "California" section titled, "She's 'the canary in the coal mine.'"

Plaintiff's photograph was included, with a caption which read: "L.A. DEPUTY CITY ATTY. Elizabeth Greenwood said flea bites at City Hall gave her typhus. Her bosses didn't believe she had the disease, she said."

On February 11, 2019, Plaintiff once again went to U.S. HealthWorks, where she was once again designated as "temporarily partially disabled." Since Plaintiff was going to see the City-designated infectious disease specialist on February 14, the doctor at U.S. HealthWorks extended her disability period only through February 14, 2019. Plaintiff emailed the Work Status Report and Injury Status Report to HR Analyst David Trujillo on February 11, 2019.

Also on February 11, 2019, Plaintiff sent David Trujillo a very long email, stating her objections to the demotion to the Pacific Office, Criminal Branch (handling misdemeanor arraignments at the LAX courthouse). Among other things, Plaintiff wrote:

> In early December 2018, I reported the typhus danger to Los Angeles County Health Department, Acute Communicable Disease Department. On December 20, 2018, I reported the typhus danger at City Hall East, and the City Attorney's refusal to take any action to protect its employees, to Cal/OSHA. In early January 2019, I reported the same health dangers the City Attorney was knowingly allowing to persist to Los Angeles County Vector Control District.
>
> I also filed a complaint with the Department of Fair Employment and Housing, which was served on the City Attorney's Office on January 17. Later in January, after the City Attorney's office continued to stonewall me over the public health issue it was allowing to persist, I started talking to NBC. I talked to Joel Grover about the failure of the City Attorney's Office to protect me and then for the past several months its employees (and the members of the public who visit City Hall and City Hall East) from typhus. We discussed at length the City Attorney's Office had known about this for months and had not even sent a department wide email warning employees about the danger they faced.
>
> The day after the City Attorney's administration received a call from Joel Grover regarding safety precautions taken after my diagnosis, on January 31, you sent me an email once again ordering me back to work "or else," despite the orders from U.S. HealthWorks– the City's own industrial medicine provider. You falsely stated "driving or operating heavy equipment" is not an essential function of my job. I replied to your email by my email dated February 4. In case you do not recall the contents of my email, I stated:

> The City of Los Angeles created an environment in which I was injured, badly. The standard you should be looking at is one of reasonable accommodation, not "essential function." However, since you brought it up, driving a vehicle is an essential function of my job. I am required to attend depositions as well as depose plaintiffs, defendants, and witnesses offsite. Further, I am required to attend court hearings all over Los Angeles, Riverside, and Orange Counties. . . .
>
> How the City Attorney could knowingly expose its employees to this horrible bacteria is shocking to me. The fact it knowingly exposes the public, who enters the building every day to conduct business, is criminal. The fact that you, Vivienne Swanigan, and the City Attorney's office are retaliating against me for standing up for my legal rights and for speaking out and telling people the danger they face walking into that building is unconscionable. . . .
>
> My loud and repeated whistling to the Department of Fair Employment and Housing, the Los Angeles Superior Court, Cal/OSHA, the Los Angeles Vector Control District and the media has resulted not in the City Attorney's Office doing the right (and smart) thing, but instead in you (and Vivienne Swanigan) sending the February 6, 2019 email in which you advise me that I am being transferred to the airport courthouse, where I will be a misdemeanor line deputy doing misdemeanor arraignments. This is so obviously a demotion it constitutes unlawful retaliation under common law and several sections of the Labor Code. (My attorney is currently amending the lawsuit to include the latest acts against me.)

On February 12, 2019, David Trujillo sent an email to Plaintiff in which he stated:

> It appears you are rejecting the assignment to the Pacific Branch as a reasonable accommodation. Therefore, we will continue to look for alternative positions; however, at present, no positions are available in the Port or Harbor area. In the meantime, as a reasonable accommodation, the Office will allow your Personal Medical Leave for yesterday, Wednesday, and Thursday [February 11, 13, and 14] and will utilize your 75% sick time for those days, as requested. The Office will also credit you with 4 hours for your participation in the reasonable accommodation process this pay periiod in order to allow you to reach the 40 hour threshold needed to maintain your medical coverage.

(Plaintiff had attended a LACERS meeting all day on Tuesday, February 12; her mother drove her

to the meeting and her domestic partner drove her home.)

On February 13, 2019, Plaintiff filed a complaint with the U.S. Department of Occupational Safety and Health Administration (Federal OSHA) alleging retaliation for filing a complaint with CalOSHA regarding safety and health hazards at her workplace.

On February 14, 2019, Plaintiff saw infectious disease specialist Richard T. Sokolov, M.D. (another City-designated doctor). Dr. Sokolov directed that Plaintiff be off work for the next three weeks. Dr. Sokolov told Plaintiff that since she was still suffering from vertigo, her brain had not recovered from the Typhus, so she should not be working. Dr. Sokolov also stated it was his professional opinion that Plaintiff had contracted the Typhus while working at City Hall East.

Also on February 14, 2019, Plaintiff sent another very long email to David Trujillo. Among other things, Plaintiff wrote:

> I object to the term "Personal Medical Leave" since this is leave which is necessary because of an on-the-job injury, and for which I have filed a workers' comp claim. I am also confused regarding what this means. It is not clear to me whether the medical leave is intended to be from now until the City Attorney's Office comes up with an appropriate reasonable accommodation, or whether it is only for Monday, Wednesday, and Thursday of this week. That question is probably not that important now, though, because today I saw the infectious disease doctor Richard Sokolov, M.D. (who U.S. HealthWorks referred me to and will be my industrial injury treating physician), and he put me off work for three weeks, effective today. A copy of Dr. Sokolov's prescription placing me off work is attached to this email.
>
> I cannot tell you how disappointing it is to see the level of indifference the City Attorney's office has shown to me, to the safety of the employees who work in City Hall East, and to the health of the members of the public forced to come to the building to conduct their business with the City. This office has been on notice of my illness since November 27, 2018. Their failure to act, their failure to even notify people of the danger they face walking into the building is grossly negligent and a complete abdication of the public trust.

On both Saturday, February 16, and Sunday, February 17, Plaintiff was again mentioned in articles in the *Los Angeles Times* regarding the Typhus epidemic and the rat and flea infestation at City Hall and City Hall East.

On February 22, 2019, the Acting Human Resources Director, Stephanie B. Ybarra, sent Plaintiff

a letter advising her that her "request for a personal medical leave of absence extension" had been "approved as a reasonable accommodation for the continuous period of February 11, 2019 through March 7, 2019." In a total denial of their part in causing Plaintiff's injuries, EMPLOYER Defendants continue to use the terms "personal medical leave of absence" and "reasonable accommodation" even though Plaintiff was unable to work because of an on-the-job injury, Plaintiff had filed a workers' compensation claim, and the City-designated infectious disease specialist had stated Plaintiff was unable to work. The letter was also emailed to Julie San Juan, Plaintiff's new supervisor at her new assignment at the Pacific Office, Criminal Branch.

Later on February 22, 2019, Plaintiff sent an email to David Trujillo in which she wrote:

> I received your letter granting personal medical leave until March 7, 2019, due to my recovering from the typhus I contracted at work. My next doctor's appointment is March 14, 2019, so I am unsure how you wish for me to go to work, or to where you expect me to report prior to my next doctor's appointment. I will not have a medical release before that appointment.
>
> I have still not received a phone call from anyone at the City Attorney's office inquiring about my health. I mention that because it is shockingly rude and insensitive. Nor have I received any communication whatsoever that resembles a conversation about what would be a reasonable accommodation after management let the health and cleanliness conditions in City Hall East reach the point that I almost died. I have only received orders to show up at different work sites for different jobs.
>
> Our last communication involved my unilateral and involuntarily transfer. I called my association for assistance because involuntary transfers involve the MOU, and in my case also violate Whistleblower statutes. Someone told Oscar Winslow, the Association President, that I requested the transfer. I did not. That was a lie. I asked you with which supervisor I should begin the grievance process. You replied characterizing my response as a refusal of your reasonable accommodation but never answered my question about which supervisor I should contact.
>
> Based on your response I incorrectly assumed that transfer was not going to happen. Julie San Juan was included in today's email, but not Cory Brente. Should I assume the office is continuing with the illegal unilateral involuntary transfer?
>
> I look forward to your rapid response.

David Trujillo responded (on February 22) that the transfer to the Pacific Office, Criminal Branch was "no longer happening."

As of this date, Plaintiff has still not returned to work, because she is still suffering from severe vertigo, dizziness, and disequilibrium and is therefore unable to drive, and because the building where her office is located has still not been fumigated. Additionally, the electric high-adjustable desk and electric high-adjustable chair which Plaintiff requires in order to be able to work without extreme pain to her lumbar spine have still not been delivered to her office. (Having to bend over and manually lower or raise a desk and chair several times per day is counterproductive to accommodating Plaintiff's lumbar spine injury.)

Plaintiff has repeatedly requested that the building where she works (City Hall East) be fumigated before she returns to work. Even though Defendant CITY began fumigating other buildings in October 2018, EMPLOYER Defendants have failed and refused to fumigate City Hall East. (The Los Angeles Police Department buildings have been fumigated on about October 10, October 26, and December 14, 2018.) Plaintiff has pointed out that, because of her auto-immune disorder, she is at greater risk than others for re-contracting Typhus, but EMPLOYER Defendants have still failed and refused to fumigate City Hall East.

Plaintiff's current medical leave expires March 7, 2019, even though her next appointment with Dr. Sokolov is not until March 14, 2019.

Plaintiff remains under the care of her general physician (Terry Ishihara, M.D.), her pain management doctor (Fabian Proano, M.D.), her gynecologist (Reza Askari, M.D.), and her endocrinologist (Olga Caloff, M.D.) for treatment of all her medical conditions except the Typhus. For the Typhus, Plaintiff is still being treated by the doctors at United HealthWorks, and the City-designated infectious disease specialist, Richard T. Sokolov, M.D.

EXHIBIT 4

TO FIRST AMENDED AND SUPPLEMENTAL COMPLAINT OF ELIZABETH L. GREENWOOD

PROOF OF SERVICE

I, Deena Kinzer, declare under penalty of perjury that I am over the age of 18 years and not a party to this action, and that on this date I served the individuals listed below with the following documents:

1) Notice of Filing Discrimination Complaint (with the Department of Fair Employment and Housing, Case No. 201903-05344505)

2) Notice of Case Closure and Right to Sue (issued by the Department of Fair Employment and Housing, Case No. 201903-05344505)

3) Complaint of Employment Discrimination Before the State of California Department of Employment and Housing Under the California Fair Employment and Housing Act (Gov. Code §§ 12900, *et seq.*) (Department of Fair Employment and Housing, Case No. 201903-05344505)

Individuals served:

OFFICE OF THE CITY CLERK
200 North Spring Street
Room 395, City Hall
Los Angeles, CA 90012

MICHAEL N. FEUER
c/o OFFICE OF THE LOS ANGELES CITY ATTORNEY
200 N. Main Street, 9th Floor, City Hall East
Los Angeles, CA 90012-4131

OFFICE OF THE LOS ANGELES CITY ATTORNEY
Attn: Vivienne Swanigan, Managing Assistant City Attorney and Supervising Attorney, Labor Relations Division
200 N. Main Street, Room 800, City Hall East
Los Angeles, CA 90012-4131

OFFICE OF THE LOS ANGELES CITY ATTORNEY
Attn: Cory Brente, Supervising Assistant City Attorney
200 N. Main Street, Room 800, City Hall East
Los Angeles, CA 90012-4131

Service was made by placing a copy in a separate envelope, with postage fully prepaid, addressed to the individual listed above at the address listed above, and depositing it in the U.S. Mail at Torrance, California, via certified mail with return receipt requested. [Gov. Code § 12962(b).]

Executed on March 18, 2019 at Torrance, California.

Deena Kinzer

ESKRIDGE LAW
GAYLE L. ESKRIDGE (BAR NO. 134822)
JANELLE L. MENGES (BAR NO. 293865)
JACQUELINE M. WADE (BAR NO. 304024)
21250 Hawthorne Boulevard, Suite 450
Torrance, CA 90503-5512
Telephone: 310/303-3951
Facsimile: 310/303-3952
Website: www.eskridgelaw.net

Attorneys for Plaintiff ELIZABETH L. GREENWOOD

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ELIZABETH L. GREENWOOD, Plaintiff, v. CITY OF LOS ANGELES, a municipal corporation; OFFICE OF THE LOS ANGELES CITY ATTORNEY, a department of the CITY OF LOS ANGELES; MICHAEL N. FEUER, CITY ATTORNEY, an individual; CORY BRENTE, an individual; and DOES 1 through 20, inclusive, Defendants.	**CASE NO.: 19STCV02469** **PROOF OF SERVICE** **Dept: 73** **Judge: Hon. Rafael A. Ongkeko (and Hon. Christopher K. Lui)** Case Filed: January 25, 2019 CMC: May 24, 2019 Trial Date: Not set

I, Deena Kinzer, declare under penalty of perjury that I am over the age of 18 years and not a party to this action, and that on this date I served the individuals listed below with the following documents:

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT

Individuals served:

BURKE, WILLIAMS & SORENSEN, LLP
Attn: Susan E. Coleman and
Paloma P. Peracchio
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Attorneys for Defendants CITY OF LOS ANGELES, OFFICE OF THE LOS ANGELES CITY ATTORNEY, MICHAEL N. FEUER, and CORY BRENTE

Service was in the manner checked and on the date set forth below:

1) ____ By personally delivering copies to the individual listed above at the address listed above. [*Code Civ. Proc. § 1011*]

2) ____ By personally delivering copies to the office of the individual listed above at the address listed above, in a package clearly labeled to identify the person being served, with a receptionist or with a person in charge. [*Code Civ. Proc. § 1011*]

3) ____ By personally leaving copies in a conspicuous place at the office of the individual listed above at the address listed above, between the hours of 9:00 a.m. and 5:00 p.m. [*Code Civ. Proc. § 1011*]

4) ✓ By placing a copy in a separate envelope, with postage fully prepaid, addressed to the individual listed above at the address listed above, and depositing it in the U.S. Mail at Torrance, California. [*Code Civ. Proc. §§ 1012* and *1013(a)*]

5) ____ By sending a copy directed to the individual listed above, via facsimile machine to the following facsimile number:

XXX/XXX-XXXX

[*Code Civ. Proc. § 1013(e)*]

6) ___ By depositing a copy in a Federal Express box, in an envelope designated by Federal Express with delivery fees paid or provided for, addressed to the individual listed above, at the address listed above. [*Code Civ. Proc. § 1013(c)*]

Executed on May 21, 2019 at Torrance, California.

/s/ DEENA KINZER
Deena Kinzer